United Nations A/HRC/25/G/2

General Assembly

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Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Letter dated 20 January 2014 from the Permanent Representative of the Republic of Azerbaijan to the United Nations Office at Geneva addressed to the President of the Human Rights Council

I hereby send you a copy of the press release of the Permanent Mission of the Republic of Azerbaijan concerning the commemoration of the twenty-fourth anniversary of Black January in Azerbaijan.

I would be highly appreciative if you could kindly circulate the present letter and the annex thereto* as a document of the Human Rights Council under agenda item 4.

(*Signed*) Murad N. Najafbayli

Ambassador, Permanent Representative

* Reproduced as received, in the language of submission only.

GE.14-10487

1410487

Please recycle

Annex

[English only]

Commemoration of the twenty-fourth anniversary of the Black January

Today is a Day of National Mourning in the Republic of Azerbaijan. Thousands of people are visiting Alley of Martyrs to commemorate the memory of the heroism of courageous sons of the Azerbaijani people perished on 20 January 1990 for the sake of freedom and independence.

20 January 1990 went down in the history of Azerbaijan as one of the most tragic and, at the same time, heroic dates for our people. Twenty four years ago, on that horrific night, patriotic people of Azerbaijan decided that the honor and dignity of their native country, the freedom of their nation are above anything else and became martyrs. Although it has been 24 years since Soviet troops perpetrated this bloody massacre in Azerbaijan, our people have not forgotten the pain of those horrendous days and are expressing their contempt for the then leaders of the Soviet empire.

Former Soviet leadership decided to stifle the protest of the Azerbaijani people by using military force. Over the night from 19 to 20 January 1990, large contingent of Soviet Army and its internal troops stormed Baku and some regions of Azerbaijan which caused a great number of causalities. Women, children, elderly, even medical servants, ambulances were brutally targeted by the Soviet army.

Soviet authorities tried to conceal the scale of this tragic crime from its own people and the international community. But the grave consequences of this operation were so obvious! As a result of the bloodshed in Baku 131 innocent civilians were killed, 611 people wounded, hundreds of people arrested. State of emergency was proclaimed in the capital of Azerbaijan which lasted more than one year.

The massacre perpetrated by the Soviet military machine in Azerbaijan was an act of unseen aggression and execution of citizens by its own state. It represented a flagrant breach of the Constitutions of the former USSR and the Azerbaijan SSR. By sending troops to crush the civilian population on that day, the USSR government flouted the UN Charter, the principles of the Universal Declaration on Human Rights, international law and a number of clauses of the 1966 International Covenant on Civil and Political Rights of which it had been a party.

This despicable act could not prevent the Azerbaijani people from the intention of getting independence from Soviet Union. Brave struggle of the Azerbaijani people which entered into decisive phase after the 20 January tragedy led to its logical end; in October 1991 Azerbaijan regained its independence.

Today, Azerbaijani people by visiting and lying flowers on the graves of heroes are paying once again tribute to the victims of the 20th January tragedy. The life and struggle of the martyrs are the source of pride of today's and next generations. Thanks to their heroism, today, there is an independent Azerbaijani statehood among world nations. The sacred task of all Azerbaijanis is to defend and further strengthen the independence of the Republic of Azerbaijan gained at the expense of great sacrifices.

United Nations A/HRC/25/G/3

General Assembly

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4 February 2014
English
Original: Arabic

Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Note verbale dated 17 January 2014 from the Permanent Mission of the Syrian Arab Republic to the United Nations Office and Other International Organizations in Geneva addressed to the President of the Human Rights Council

Summary

The Permanent Mission of the Syrian Arab Republic to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the President of the Human Rights Council and has the honour to transmit herewith the response of the Syrian Arab Republic to the second thematic report — entitled "Without a trace: enforced disappearances in Syria" — of the Independent International Commission of Inquiry on the Syrian Arab Republic. The Permanent Mission requests that the attached reply be circulated as an official document of the Council under agenda item 4 and posted on the Council's website, in all the United Nations official languages, prior to the Council's twenty-fifth session, the Arabic version being the original text for the purposes of translation into the other languages.

The Permanent Mission of the Syrian Arab Republic to the United Nations Office and Other International Organizations in Geneva takes this opportunity to convey to the Office of the President of the Human Rights Council the assurances of its highest consideration.

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Annex

The Syrian Arab Republic condemns in the strongest possible terms the report that was issued by the Independent International Commission of Inquiry on the Syrian Arab Republic on 19 December 2013. The report, which is entitled "Without a trace: enforced disappearances in Syria", is intended to vilify the Syrian Government based on groundless allegations that are neither proven nor substantiated and that have been made in the unprofessional and subjective manner that has characterized the Commission's work from the very outset.

The Syrian Arab Republic rejects everything that is written in the report about the Syrian authorities. In view of the grave nature of the politicized allegations that are set forth in the report, the Syrian Government is obliged to make the following points:

- In its report, the International Commission continues to target and vilify the State authority and to discredit the country's legal system. Allegations like these have not and shall not deter the Syrian Government from mobilizing all its institutions in order to fulfil its constitutional obligation to protect the population from terrorism and to safeguard the sovereignty, stability and territorial integrity of the Syrian Arab Republic within the legal frameworks that define its functions, notably the provisions of the Syrian Constitution;

- The Commission had received information about cases and testimony from so-called "dissidents" and members of opposition groups and recklessly based its report and the selective recommendations set forth therein on unproven allegations, which it uses to jump to conclusions without any reference to the details of those allegations. How can anyone with even a modicum of good sense expect anything but baseless claims and allegations to be made against the Syrian Government by such sources?;

- The Commission remains unwilling to give impartial, fair and equitable consideration to the information that the Syrian Government has submitted over the past three years to the Office of the United Nations High Commissioner for Human Rights, documenting crimes and acts of terrorism committed by armed groups. The Commission has paid no heed either to any reports from neutral parties or from sources that are not bent on exacerbating the crisis in the Syrian Arab Republic;

- The report is full of erroneous conclusions about breaches by the Syrian Government of its obligations under numerous international human rights treaties. These conclusions, on which the Commission endeavours to bestow legal status, are based on partial information obtained by methods that can in no way be defined as scientific. Some examples can be found in paragraph 19 of the report, in which it is stated that the Commission has reached the "conclusion" that enforced disappearance is used as a method of punishment. This in turn is based on a "conclusion" that a dissident soldier reached regarding an alleged incident;

- The Commission refers to the adoption of a policy of hostage-taking and abduction by what it describes as "armed opposition groups". However, it refers to this grave phenomenon briefly and claims that the groups only resorted to the practice in 2013. Yet, the Office of the High Commissioner has plenty of evidence and names and details, as provided to it by the Syrian Government, concerning cases where terrorist groups abducted Syrian civilians for no reason other than the fact that they were State employees or supporters of the Government. The Commission has turned a blind eye to cases where children have been abducted so that their kidnappers could blackmail the parents for political and financial gain. These incidents began in 2011,

when the crisis was in its early days. The Commission persistently and deliberately ignores facts, disregarding cases of abduction where, on more than one occasion, the victims were members of United Nations peacekeeping forces. It has intentionally disregarded a wealth of information about civilians being used as human shields, being held in degrading and inhumane conditions of detention or being brutally murdered or about cases where the fate of civilians remains unknown and where thousands of Syrian families continue to live caught between despair and the hope that their loved ones will return.

Furthermore, contrary to the claims in the Commission's report, the legal system in Syria reflects the principles on which the Syrian Constitution is founded: guarantees of citizens' dignity and security; maintenance of personal freedom; and fair trial guarantees. The system also ensures that any State employee who commits any breach of duty will be brought to book. Foremost among the laws in this system are the Code of Criminal Procedures, the Judicial Authority Act and numerous decrees and circulars that contain regulations on the work of law enforcement personnel and provide that they will be held to account should they commit any breach of duty.

Notwithstanding the events that have unfolded in the Syrian Arab Republic, and in keeping with its belief in the rule of law, the Syrian Government has continued to reform its laws and to enact new legislation to deal with new developments that have occurred as a result of these events. Legislative Decree No. 20 of 2013, concerning the offence of abduction, was enacted to address an issue that is alien to Syrian society. Under this decree, the penalty for abduction and deprivation of liberty may be as severe as capital punishment, whether the offence is motivated by political or material considerations, a desire for revenge, sectarianism or the intention to demand a ransom. It must be pointed out that criminal gangs are exploiting the circumstances that currently obtain in the country in order to put the blame on the authorities and on State institutions for what happens to the victims of these practices.

The Commission's conclusion that the fact that there are 30 cases before the Working Group on Enforced or Involuntary Disappearances is an indication that people are apprehensive about submitting complaints is a superficial and unscientific conclusion. The Syrian Arab Republic has always cooperated fully with the Working Group on Enforced or Involuntary Disappearances on allegations of this kind that fall within its purview. The Syrian Government provides the Working Group with the information that it has at its disposal on cases that fall within the Working Group's purview. The number 30 does not constitute a phenomenon (that being said, the Syrian Arab Republic will not tolerate any enforced disappearance of any citizen), while the records of other countries, including those of major States that have occupied developing countries, are full of thousands of cases of enforced disappearance.

The report again confirms that the Syrian Arab Republic is right to be concerned about the approach taken by this politicized Commission, whose reports, comments and conduct serve agendas designed to cast blame on the Syrian Arab Republic for the events, while at the same time ignoring *Takfiri Wahhabist* terrorist crimes. These concerns are borne out by the contents of these reports, whose issuance is timed to serve specific and predetermined political and ideological goals.

Lastly, if the Commission is concerned about the "fear" that is said to be widespread among Syrian citizens and if, as claimed in the report, it is committed to restoring calm to people's lives, the Commission should revisit its working methods and analyse the facts about the events in the Syrian Arab Republic. Its members should examine their own conscience and look at what they have done to date to put an end to the traumatic situation that Syrians are living through because of terrorism by armed groups and its destructive effects on their fundamental rights and security. The members should think about what they

have achieved in terms of deterring the States which support the practices of these groups and which do everything in their power to stir up the media and foment sectarian strife in order to achieve their goals of destabilizing the Syrian Arab Republic, undermining the country's security and destroying its cultural heritage.

United Nations A/HRC/25/G/4

General Assembly

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Human Rights Council
Twenty-fifth session
Agenda item 6
Universal periodic review

Note verbale dated 24 January 2014 from the Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations Office at Geneva and other international organizations in Switzerland addressed to the secretariat of the Human Rights Council

The Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations at Geneva and other international organizations in Switzerland presents its compliments to the secretariat of the Human Rights Council, and has the honour to request it to circulate the letter enclosed* dated 6 January 2014, on the national report of Eritrea within the context of the universal periodic review, and addressed to the President of the Human Rights Council, Ambassador Baudelaire Ndong Ella, and to post it on the extranet as a document of the twenty-fifth session of the Council.

* Circulated as received, in the language of submission only.

GE.14-10637

1410637

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Annex

[Original: English]

Excellency,

I have the honor to congratulate you on your election to the Presidency of the United Nations Human Rights Council for the year 2014.

I would like to draw your attention to the second cycle UPR National Report of the State of Eritrea due to be considered during the 18th Session of the UPR Working Group (A/HRC/WG.6/ERI/1.).

As Your Excellency is fully aware, the UN General Assembly, in establishing the Human Rights Council and the UPR laid important principles and rules governing the mechanism. Accordingly, the UPR is a cooperative mechanism that functions on the basis of an interactive dialogue. It shall be conducted in a constructive, non-confrontational and non-politicized manner (A/RES/60/251, A/HRC/RES 5/1 and A/HRC/RES/16/21). Furthermore, and in accordance with A/RES/65/281, the UN General Assembly directed that the second cycle UPR report of a state should focus on the implementation of accepted recommendations and the developments in the human rights situation in the state under review.

The National Report of the State of Eritrea, however, is prepared and submitted to the Council in total disregard to these principles and rules. The Report under paragraphs 84, 91 and 92, contains a false allegation against Ethiopia. Contrary to the unfounded and baseless allegation contained in the Report, Ethiopia does not occupy any part of Eritrea's territory. I am confident Your Excellency is well aware that Ethiopia has accepted the delimitation decision of the Boundary Commission. It has also expressed its readiness to peacefully resolve all remaining differences with Eritrea, including the finalization of the demarcation of the boundary between the two countries through dialogue. Eritrea's response has been further acts of destabilization of the region.

It is true that Eritrea is under UN Security Council sanctions for its acts of destabilization of the region and support to terrorist groups following a request from the Heads of State and Government of IGAD and the African Union. Pursuant to the most recent July 2013 Report of the Monitoring Group of the Security Council, Eritrea has continued to train, arm and financially support terrorist groups in our region. It should also be recalled that the Eritrea- Ethiopia Claims Commission found Eritrea liable for violating Article 2, paragraph 4, of the Charter of the United Nations by resorting to armed force in 1998 and occupying territory under peaceful administration by Ethiopia. Furthermore, Eritrea has violated the cessation of hostility agreement signed with Ethiopia following the end of the war, and created insurmountable obstacles, which forced the termination of the work of the UN Peacekeeping Mission in Eritrea and Ethiopia.

The Human Rights Council has also passed resolutions condemning Eritrea for its grave and systematic violations of human rights and re-appointed the Special Rapporteur on the human rights situations in Eritrea.

It is thus clear that the abovementioned paragraphs of the Report violate the principles and rules laid down by the General Assembly and the Human Rights Council. The UPR Report should, therefor, should focus solely on human rights issues and that the UPR Working Group is not a competent body to discuss bilateral issues of political nature contained in Eritrea's Report. If Eritrea is allowed to misuse the UPR, this would ultimately undermine the principles and the goals of the mechanism, the credibility of the UPR as a

whole and create unacceptable precedent with the capacity of derailing what has been hailed as the best example of cooperation and dialogue in the field of human rights.

The National Report of the State of Eritrea also defeats the objectives of the Review, which is expected to focus on the improvement of the human rights situation on the ground and the fulfillment of the State's human rights obligations and commitments, and assessment of positive developments and challenges faced by the State. Instead, Eritrea's Report seeks to externalize its own failures to live up to the universally accepted human rights obligations under the various international human rights instruments and seriously undermines the objectives of the Review. It is a deliberate attempt to transform a cooperative and universal system into a confrontational platform and escape scrutiny from the Human Rights Council.

The baseless allegations made against Ethiopia in the Report cannot be allowed to stand as this would seriously challenge the procedures of the Human Rights Council. Ethiopia cannot accept the welcoming of the Report by the Council as it is submitted in a deliberate manner to distort facts and in complete disregard to the principles and objectives of the UPR. It would not also serve the advancement of human rights in Eritrea. In fact, it is would amount to an injustice to victims of grave violations of human rights in Eritrea, and allowing Eritrea to flout rules scrupulously abided by all Members of the United Nations. This goes beyond legitimate sensitivities of countries as it targets the whole UPR Mechanism as a paramount human rights system. Indeed, any inadvertent failure to rectify Eritrea's mischievous attempt to find excuses to justify its human rights violations would amount to condoning its unacceptable practices, and would have enormous implications for the future of the UPR Mechanism. It is thus critical to ensure that the National Report is revised accordingly before it is submitted for consideration by the UPR Working Group. I would, therefore, kindly request Your Excellency to take appropriate measures to direct the State of Eritrea to comply with UN General Assembly and the Human Rights Council Resolutions to expunge the abovementioned paragraphs from the Report.

Please accept, Excellency, the assurances of my highest consideration.

Minelik Alemu Getahun
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

United Nations A/HRC/25/G/5

General Assembly

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4 February 2014

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Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Letter dated 29 January 2014 from the Permanent Representative of the Republic of Azerbaijan to the United Nations Office at Geneva addressed to the President of the Human Rights Council

I am sending you herewith a press release of the Permanent Mission of the Republic of Azerbaijan concerning the recent violations of the ceasefire regime by the Republic of Armenia (see annex).

I would be highly appreciative if you could kindly circulate the present letter and the annexes thereto* as a document of the Human Rights Council under the agenda item 4.

(*Signed*) Murad N. Najafbayli

Ambassador, Permanent Representative

* Reproduced as received, in the language of submission only.

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1410801

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Annex I

[English only]

Concerning recent violations of ceasefire regime by the Republic of Armenia

As a result of numerous acts of provocation against Azerbaijan and the intensive violations of ceasefire regime by Armenia during the recent days, officer of the Armed Forces of the Republic of Azerbaijan, captain Mr. Elnur Jafarov and lieutenant Mr. Sabuhi Azizov were killed, another civilian was wounded, the school building was fired during the course hours and the private houses and property of the Azerbaijani civilian population residing close to the frontline were massively shelled.

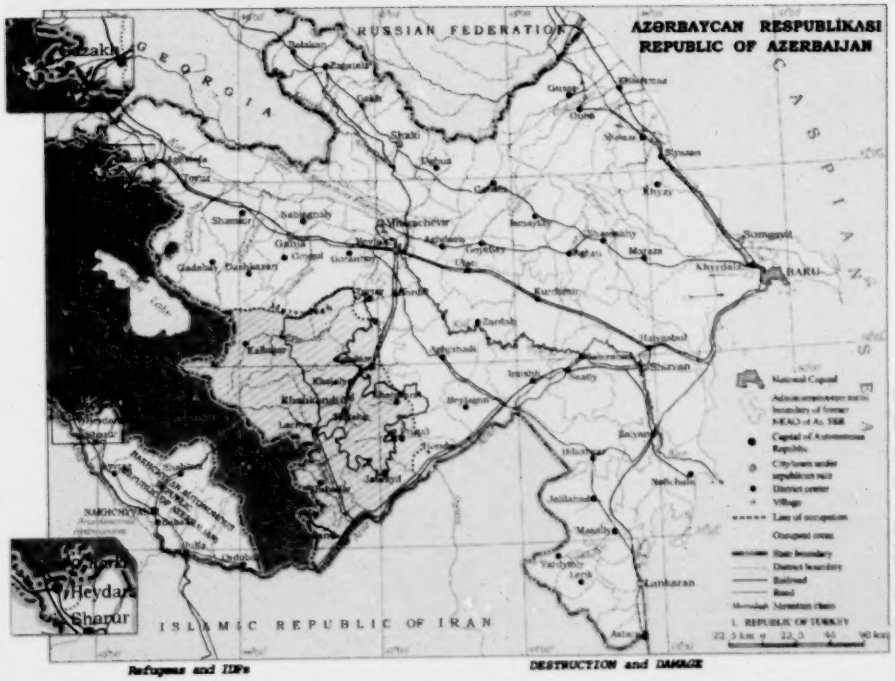
According to the information of the Ministry of Defence of the Republic of Azerbaijan, on 28 January 2014, the armed forces of Armenia violated the ceasefire196 times from their positions located both in the territory of Armenia and in the occupied areas of Azerbaijan. On 29 January 2014, the number of ceasefire violations by the Armenian side reached 250.

Primary and foremost responsibility for the recent escalation of the situation at the frontline falls directly on Armenia, the country which continues the occupation of the territories of the Republic of Azerbaijan and pursues the policy of aggression against Azerbaijan. The continuation of occupation of the territories of Azerbaijan by the armed forces of Armenia in contradiction with the relevant resolutions of UN Security Council and General Assembly, UN Charter, norms and principles of international law, being the main source of tension, constitutes the major obstacle for the peaceful solution of the Armenia-Azerbaijan Nagorno-Karabakh conflict and the establishment of peace in the region.

The Republic of Azerbaijan strongly condemns the provocative actions of the Armenian side, which can in no way contribute to the establishment of confidence between the parties and the resolution of the long-lasting conflict. The stance of Azerbaijan with regard to the solution to the conflict is crystal-clear. This is based on the resolutions of UN Security Council and General Assembly and norms and principles of international law. The armed forces of Armenia should be withdrawn from the occupied territories of Azerbaijan at the first point in order to achieve the solution of the conflict. That is the shortest and most effective way for the establishment of peace and stability in the region.

Annex II

RESULTS OF ARMENIAN AGGRESSION



DESTRUCTION and DAMAGE

Refugees and IDPs

Refugees from Armenia	250.000
IDPs from the occupied territories	686.566
TOTAL:	**936.566**

Settlers illegally transfered to the occupied territories

former NKAO	8.500
Lachyn	13.000
Kelbajar	700
Zangilan	520
Jabrayil	280
Total:	**23.000**

Armenian Armed Forces in the occupied territories

Tanks	320
ACV	348
Artillery	425
Personnel	45.000

Settlements	890
Houses	150.000
Public buildings	7.000
Schools	693
Kindergardens	855
Healthcare facilities	695
Libraries	927
Temples	44
Mosques	9
Historical places	9
Historical monuments and museums	464
Museum exhibits	40.000

Ind. and agricul. enterprises	6.000
Motorways	800 km
Bridges	160
Water pipelines	2.300 km
Gas pipelines	2.300 km
Electricity lines	15.000 km
Forests	265.000 ha
Sowing area	1.300 000 ha
Irregation sys.	1.200 km

The total damage is estimated up to 60 billion $ US

The occupied territories of the Republic of Azerbaijan

Former Nagorno Karabakh Autonomous Oblast - NKAO(1923-1991)

Territory:	4.388 sq.km
Population (1989):	189.085
- Armenians:	145.450 (76,9%)
- Azerbaijanis:	40.688 (21,5%)
- Russians:	1922 (1%)
- Others:	1025 (0,5%)
Adm.territorial div.:	Mardakert, Askeran, Shusha, Martuni, Hadrut districts

SHUSHA district

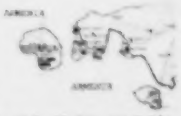
Territory:	290 sq.km
Population (1989):	20.579
- Azerbaijanis:	19.036 (92,5%)
- Armenians:	1.377 (6,7%)
Date of occupation:	May 8, 1992

THE OCCUPIED TERRITORIES OF THE REPUBLIC OF AZERBAIJAN OUTSIDE FORMER NKAO

	date of occup.	area (in sq.km)	popul. at the time of occup. (in 1989)	current popul.
Lachyn	18.05.1992	1.845	31.596	70.900
Kalbajar	02.04.1993	3.050	57.756	63.200
Aghdam	23.07.1993	1.150	131.139	180.600
Fuzuli	23.08.1993	1.390	40.779	118.917
Jabrayil	23.08.1993	1.050	46.349	70.700
Gubadly	31.08.1993	830	29.111	30.700
Zangilan	29.10.1993	720	32.330	40.500

GAZAKH district*

Baghanis Ayrym	24.03.1993
Kheyrymly	08.03.1992
Ashaghy Askipara	12.03.1992
Barkhudarly**	27.04.1992
Sofulu**	27.04.1992
Gyzylhajyly	11.05.1992
Yukhary Askipara**	08.06.1992



*the population of the occupied territories of Gazakh distr. was purely Azerbaijanis.
**enclave villages.

SADARAK dist., NAKHCHIVAN AR

	date of occup.	population (1989)	ethnic comp. (1989)
Karki enc.village	15.01.1990	333	100% aze

Victims of aggression

killed:	20.000
disabled:	50.000
missing :	4.866

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The Republic of Azerbaijan
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A/HRC/25/G/1

United Nations A/HRC/25/G/6

General Assembly

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Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Letter dated 3 February 2014 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations Office at Geneva addressed to the President of the Human Rights Council

In connection with the forthcoming interactive dialogue with the "commission of inquiry" on human rights in the Democratic People's Republic of Korea at the twenty-fifth session of the Human Rights Council, I have the honour to reiterate the principled position of the Democratic People's Republic of Korea.

The Democratic People's Republic of Korea categorically rejects the "commission of inquiry" and the "resolution" on the establishment of its mandate.

The position of the Democratic People's Republic of Korea has already been clearly stated on several occasions through official communications, including my predecessors' letters dated 8 June 2007 (A/HRC/5/G/5), 30 January 2008 (A/HRC/7/G/3), 29 January 2009 (A/HRC/10/G/6), 21 January 2010 (A/HRC/13/G/7), 19 January 2011 (A/HRC/16/G/2), 1 February 2012 (A/ HRC/19/G/1) and 28 January 2013 (A/HRC/22/G/4) and addressed to your predecessors.

I would like to take this opportunity to draw your attention and, through you, that of the Human Rights Council to the following facts in particular.

Firstly, the "commission of inquiry" is a product of political confrontation and a plot against the Democratic People's Republic of Korea, and has no relevance to human rights.

As already well known, the "commission of inquiry" was established as a result of so-called "resolutions" on the Democratic People's Republic of Korea.

All those "resolutions" on the Democratic People's Republic of Korea. including Human Rights Council resolution 22/13, have, without exception, been forcibly adopted as part of hostile and stifling acts constantly committed for more than half a century by the United States, Japan and the States members of the European Union and their allies with a view to eliminating the State and social system of the Democratic People's Republic of Korea. They have no relevance to the genuine promotion and protection of human rights.

In 2003 alone, when the adoption of the first "resolution" on the Democratic People's Republic of Korea was enforced, the United States and its Western allies had been running amok to stifle the Democratic People's Republic of Korea with the pretext of a nuclear issue and, as an extension of these manoeuvres, went so far as to initiate and enforce the adoption of the "resolution" on the situation of human rights in the Democratic People's Republic of Korea at the fifty-ninth session of the Commission on Human Rights.

As a matter of fact, bilateral dialogue and cooperation between the Democratic People's Republic of Korea and the European Union in the area of human rights, which had started in June 2001 for the first time in our history, was at an excellent stage at that time, while the Democratic People's Republic of Korea had been maintaining a considerably high level of cooperation with international human rights mechanisms.

There was no reason whatsoever for those countries to unilaterally and deliberately ignore this ongoing process of human rights dialogue and cooperation and to resort to hostility and confrontation had they not really been harbouring ulterior motives against the Democratic People's Republic of Korea.

In spite of this, the United States, Japan and the States members of the European Union chose to pursue confrontational enforcement of the adoption of the "resolution", and have since continued such hostility every year.

Since the motives of initiation of the "resolutions" on the Democratic People's Republic of Korea were wrong and despicable, the process of their enforced adoption in its entirety was inevitably accompanied by plots and all sorts of injustice.

As an example, in 2003 alone, the "resolution" was treated as top secret at all stages, from drafting to official submission, tabled in the form of a surprise raid shortly before voting and forcibly adopted through the high-handedness, arbitrariness and behind-the-scenes pressure and trickery of the United States, Japan and the States members of the European Union. The traditional and common practice in the international human rights area relating to "prior notice to and consultations with the party directly concerned" was completely disregarded.

Even the initiators of the "resolution" acknowledged this wrongdoing.

Would there be any need for the United States, Japan and the European Union to pursue a confrontational "resolution" if they had no ulterior motive against the Democratic People's Republic of Korea and were truly interested in dialogue and cooperation in the area of human rights?

Furthermore, why would these countries resort to such a despicable and sinister back-door approach if their acts were genuinely motivated by the promotion and protection of human rights?

In today's world, the human rights violations that merit the important attention of international human rights mechanisms, including the Human Rights Council, and need to be addressed urgently are those that were committed during the invasion of Afghanistan and Iraq and the resultant civilian killings, such large-scale past crimes against humanity as sexual slavery, racial discrimination and the defamation of religion, and the human rights violations committed in the occupied Arab territories, including Palestine.

The United States, Japan and the European Union have always talked about their uncompromising approach to human rights violations, no matter when, where and by whomever they are committed. Unfortunately, however, they make no reference whatsoever to the above-mentioned gross human rights violations for which they themselves and their allies are responsible.

Japan in particular committed such unprecedented crimes against humanity as the forcible drafting and abduction of 8.4 million people, 1 million genocidal killings and the sexual slavery of 200,000 people for the Japanese army, of the then population of 20 million during its military occupation of Korea for more than 40 years. Japan has not yet accepted its responsibility for these crimes, even in the new century.

Nevertheless, the United States, Japan and the European Union provoke innocent countries, including the Democratic People's Republic of Korea. This constitutes extreme hypocrisy and double standards. Furthermore, this can be construed as nothing but a pursuit of a political objective in contravention of the genuine promotion and protection of human rights.

The "commission of inquiry", which originated and has existed through this machination, is none other than a marionette running here and there, representing the ill-minded purposes of such string-pullers as the United States, Japan and the States members of the European Union.

Secondly, the "commission of inquiry" and the "Special Rapporteur" run counter to the current trend against politicization and moving towards genuine dialogue and cooperation in the area of human rights.

The purpose of the establishment of the Human Rights Council was to eradicate politicization, selectivity and double standards, which were rampant in the international human rights field for more than 60 years, and to introduce a genuine mechanism of dialogue and cooperation beneficial to all.

Unfortunately, however, such country-specific mandates as those of the "Special Rapporteur" and the "commission of inquiry", which are the breeding ground for politicization, selectivity and double standards, still remain, giving rise to deep concern.

Western countries have always been stubborn in their attempt to maintain country-specific mandates in order to continue to behave as "human rights judges" trampling on the sovereignty and interfering in the internal affairs of those countries they dislike.

Country-specific mandates precisely mean confrontation. Confrontation can never be compatible with genuine dialogue and cooperation in any circumstance.

The position on country-specific mandates will therefore remain a criterion for determining whether or not one aspires to genuine dialogue and cooperation.

While the universal periodic review mechanism is in full operation as an indispensable function of the Human Rights Council, treating all countries equally and impartially, the anachronistic country-specific mandates singling out specific countries for naming and shaming continue to exist in parallel. This is completely ironic and unacceptable and, therefore, should no longer be tolerated.

Only then will it be possible for the Human Rights Council to avoid repeating the same failure as the Commission on Human Rights and become a mechanism of genuine dialogue and cooperation in the real sense envisaged by its founding ideals.

The Democratic People's Republic of Korea regards sovereignty and dignity as its lifeline.

As in the past, the Democratic People's Republic of Korea will continue to consistently maintain its principled position of opposing and rejecting the politically motivated "commission of inquiry" and the "Special Rapporteur".

I would be grateful if you could kindly circulate the present letter as a document of the twenty-fifth session of the Human Rights Council.

(*Signed*) So Se Pyong

Ambassador, Permanent Representative

United Nations A/HRC/25/G/7

General Assembly

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Universal periodic review

Note verbale dated 3 February 2014 from the Permanent Mission of the State of Eritrea to the United Nations Office at Geneva and other international organizations in Switzerland addressed to the Office of the President of the Human Rights Council

The Permanent Mission of the State of Eritrea to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the President of the Human Rights Council, and has the honour to submit a response to note verbale dated 24 January 2014 from the Permanent Representative of the Federal Democratic Republic of Ethiopia addressed to the secretariat of the Human Rights Council (A/HRC/25/G/4).

Please find herewith the response of the Permanent Mission of the State of Eritrea to the United Nations,* to be circulated as an official letter to all States Members of the Human Rights Council, posted on the extranet and considered by the Council at the upcoming twenty-fifth session.

* Circulated as received, in the language of submission only.

Annex

[English only]

Excellency,

It has become a public knowledge that in the last month the Permanent Mission of the Federal Republic of Ethiopia has been campaigning against Eritrea's UPR National Report. This has culminated in the Diplomatic Note 411/2014 of 6 January 2014 addressed to your Excellency as the President of the Human Rights Council. The desperate request is to remove paragraphs 84, 91 and 92 of the National Report under the claim that they contradict the procedural principles and guidelines of the HRC. This letter thus focuses on Ethiopia's campaign in the pretext of Eritrea's UPR Report and the three implied dimensions which negate reality and deny the essence of the prevailing problems and related issues.

Eritrea sees this opportunity as a process of internal reflection on achievements, shortcomings as well as challenges and constraints towards its efforts in the implementation of its human rights obligations. The inclusion of challenges, constraints and best practices in Eritrea's National Report are in full conformity with the provisions of the relevant Human Rights Resolutions, A/RES/60/251, A/HRC/RES5/1, A/HRC/RES/16/21 and other relevant instruments in particular, decision 6/102 paragraph 1 (d). Therefore, for Ethiopia to talk about procedural flows in the UPR Report and consider it politically oriented is an attempt to impede the UPR process of Eritrea. It is a dodgy rebuttal that does not match the basic underlying principles. In this regard, the following reasons need to be noted:

- It is the sovereign right of every member state to discuss issues that impact on the full enjoyment of all human rights and fundamental freedoms.
- It is a basic principle of the HRC that human rights, peace and development are intrinsically related, and no other right is fully enjoyed without security. Eritrea has shown this aspect in its report by exposing the violation of the right to peace and the right to development of the Eritrean people which overall affect the promotion of human rights and fundamental freedoms.

While the above are essential elements which need to be acknowledged, Eritrea will continue to focus on the fundamental Human Right issues within the appropriate context for the success of the UPR process. This essentially emanates from Eritrea's expanded vision and practice that the Report first and foremost is to be used as an objective internal reflection that would strengthen and sustain engagement, dialogue and cooperation with members and partners.

Moreover, in terms of strategy, it would also lay a strong basis to raise commitment, and develop a systemic approach to mainstream and institutionalize human right issues in the nation building process. These are genuine goals that will not be distracted by Ethiopia's desperate efforts to use the UPR mechanism as a way of diverting attention from essential issues and problems.

The second aspect of Ethiopia's diplomatic note is its denial to its continued occupation of sovereign Eritrea's territory. This is an insult to the intelligence of the Human Rights Council and to those that closely follow the issues of Horn of Africa. The false argument provoked by Ethiopia on procedures as outlined above, is an open sophistry to camouflage the truth and reality. This is not new but again the truth and the essence must be put into the proper context. The following three points are worth mentioning on Ethiopia's violation of its treaty obligation:

- It has been 12 years now since the Eritrea Ethiopia Boundary Commission delivered its final and binding delimitation decision and has elapsed over six years since it concluded its delimitation and demarcation decisions. Yet, Ethiopia continues to occupy Badme and others territories awarded to Eritrea.
- Ethiopia's obsession on dialogue is long overdue and it has been essentially to change the final and binding ruling in its favour. As asserted by the President of the Boundary Commission: "Ethiopia is dissatisfied with the substance of the Commission's Delimitation Decision and has been seeking, ever since April 2002, to find ways of changing it". Similarly, in his Report of January 22, 2007, the UN Secretary General stated: "Ethiopia's refusal to implement - fully and without preconditions - the final and binding decision of the Boundary Commission remains at the core of the continuing deadlock".
- The implications in terms of peace, security and development is to bring an end to Ethiopia's occupation of sovereign Eritrean territories so as to lay a foundation for the normalization of relations and confidence building measures that would benefit both countries and the Horn Region.

The last aspect of the fallacy contained in the Diplomatic Note is Ethiopia's declared belligerent stance on Eritrea. This requires major attention as it is geared towards regime change. This is another dangerous game with fatal consequences to the region and the evidence has been submitted to the UN and to the Human right Council on various occasions.

It is an open secret that the late PM Meles Zenawi once declared to his parliament that Ethiopia will arm any Eritrean opposition groups. Accordingly, the Government of Ethiopia has been hosting, training, assisting and arming anti Eritrean elements, including Eritrean Jihad Group with known connections to Al Qaeda to effect regime change in Eritrea.

In this context, while Ethiopia's defiance to international law and occupation of Eritrean territories should be dealt with by international law, but its occupation of Eritrean territories is also a violation of the right to peace and development, and thus requires proper actions under Item 7 of the Human Right Council.

Eritrea's right to present its UPR report should be respected and should not be allowed to be hindered by any state that attempts to politicize issues of human rights. Therefore, Ethiopia's diplomatic note must be rejected. Eritrea, like any other state under review, may not be muzzled from addressing issues of concern that impact the full enjoyment of all human rights.

I wish to assure Your Excellency that Eritrea will fully cooperate in preserving the integrity of the Universal Periodic Review mechanism.

Please accept, Excellency, the assurances of my highest consideration.

Adem Osman
Second Secretary

United Nations A/HRC/25/G/8

General Assembly

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Human Rights Council
Twenty-fifth session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Note verbale dated 12 February 2014 from the Permanent Mission of Guatemala to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Guatemala to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit herewith the observations and comments of the Government of Guatemala with regard to the report of the United Nations High Commissioner for Human Rights on the work of her Office in Guatemala (A/HRC/25/19/Add.1) published and issued in response to note verbale GUA/03/2014 dated 5 February 2014 from the Office of the High Commissioner.

Pursuant to article V, paragraph 5, of the Agreement between the United Nations High Commissioner for Human Rights and the Government of the Republic of Guatemala on the establishment of an office in Guatemala, "the Government will issue its views regarding the report of the High Commissioner mentioned in the preceding paragraph and shall make any observations it deems pertinent regarding the report's content, which shall be transmitted by the High Commissioner to the Commission on Human Rights".

In accordance with the foregoing, the Permanent Mission would be grateful if the Office of the High Commissioner would ignore the comments of Guatemala that were transmitted in note verbale No. 1007/DH/13 dated 13 February 2013 and give due consideration to the content of the attached communication* and have it circulated as a document of the Human Rights Council at its twenty-fifth session.

* Reproduced in the annex as received, in the language of submission only.

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Anexo

[Español solamente]

Observaciones y comentarios del Estado de Guatemala al Informe de la Oficina del Alto Comisionada de las Naciones Unidas para los Derechos Humanos sobre las actividades de su oficina en Guatemala

I. Introducción

El Estado de Guatemala en atención a la invitación de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos – OACNUDH – para realizar comentarios sobre datos fácticos contenidos en el informe sobre las actividades que realiza su oficina en Guatemala correspondiente al año 2013 y de acuerdo a lo establecido en el mandato de la Oficina en su literal g, inciso 5, del Artículo V: "El Gobierno podrá pronunciarse sobre el Informe del Alto Comisionado de que trata el párrafo anterior, formulando todas las observaciones que estime pertinentes sobre su contenido, las cuales serán transmitidas por el Alto Comisionado a la Comisión de Derechos Humanos", presenta los siguientes comentarios generales y específicos a la versión del informe enviado a esta Comisión en enero del año en curso, por medio del Ministerio de Relaciones Exteriores.

El Estado de Guatemala hace un reconocimiento al trabajo que realiza la Oficina del Alto Comisionado para los Derechos Humanos en Guatemala, promoviendo la observancia de la situación del país en materia de derechos humanos y su gestión para el diálogo, procurando los principios de las Naciones Unidas entre ellos, imparcialidad, independencia, objetividad y transparencia.

II. Comentarios generales

El Estado de Guatemala solicita a la Alta Comisionada reconsiderar las afirmaciones incluidas en el informe preparado por su Oficina en el país, en referencia a lo manifestado en la parte de resumen del documento en su párrafo segundo, segunda línea, en el que refiere "que la Corte de Constitucionalidad revirtiera en mayo la sentencia en contra de Efraín Ríos Montt", mientras en su párrafo 27, página 7 se refiere de manera diferente y a la continuidad del proceso y se tome en cuenta comentario agregado por el Estado de Guatemala.

En la parte del contexto nacional en el que se afirma que en el país existe una situación de discriminación estructural que enfrentan los pueblos indígenas y además existe un contexto general de violencia y actividad del crimen organizado, lo anterior, no permite visibilizar y valorar las acciones y medidas implementadas por el Estado para cambiar lo que se hace mención. Que se cambie el concepto de territorios indígenas por comunidades indígenas, ya que constitucionalmente[1] se refiere que Guatemala es reconocida y caracterizada como un Estado unitario, multiétnico, pluricultural y multilingüe, conformada esa unidad dentro de la integridad territorial y las diversas expresiones socio-culturales de

[1] Artículo 58 y Sección Tercera; Comunidades Indígenas. Constitución Política de la República de Guatemala.

los pueblos indígenas, los que aún mantiene n la cohesión de su identidad, especialmente los de ascendencia Maya[2].

El Estado de Guatemala reitera su solicitud hecha en el 2012, en relación al envío del informe para elaborar comentarios, se realice con un mínimo de 15 días hábiles y como máximo 30 días hábiles al Ministerio de Relaciones Exteriores.

III. Comentarios Específicos[3]

En relación al contenido del Informe el Estado de Guatemala solicita a la Alta Comisionada considerar lo siguiente:

Capítulo III: Situación general de derechos humanos

12. Los y las defensores y defensoras de derechos humanos continuaron siendo víctimas de campañas de descalificación a través de algunos medios de comunicación. Los ataques se dirigieron indistintamente contra defensores de víctimas de violaciones cometidas durante el conflicto armado interno, defensores del ambiente, pueblos indígenas y comunidades campesinas. En algunos casos altos funcionarios del Estado cuestionaron también su labor (párr. 45 y 49).

El Estado de Guatemala a través de sus acciones reafirma el compromiso de garantizar el trabajo de las defensoras y los defensores de derechos humanos. No existe por parte del Gobierno tendencia a criminalizar su actividad. Se han procesado penalmente a quienes se les ha comprobado que han cometido delito. El Estado de Guatemala ve con preocupación la afirmación hecha por la Oficina en el presente párrafo, con base a denuncias que no hayan sido presentadas ante el Ministerio Público que es el órgano responsable de la persecución penal.

Capítulo IV: Justicia

19. Sin embargo, hubo poco avance en la implementación de la Ley de la Dirección General de Investigación Criminal, que tiene por objeto asegurar la sostenibilidad de la coordinación interinstitucional.

En el párrafo 18 la Oficina de la Alta Comisionada indica que: "se registran importantes logros en la lucha contra la impunidad y se dictaron sentencias de alto impacto social relacionadas con el crimen organizado… La coordinación entre las instituciones del sector justicia, en la investigación y persecución penal, tuvo como resultado el desmantelamiento de varias redes de corrupción…". A razón de ello el Estado considera contradictorio lo afirmado por la Oficina de la Alta Comisionada, relacionado con la Ley de la Dirección General de Investigación Criminal, en virtud que el objeto de dicha ley consiste en la creación de la Dirección General de Investigación Criminal, así como regular su organización y funcionamiento y no tanto al objeto de asegurar la sostenibilidad de coordinación interinstitucional que de hecho se ha venido dando.

B. Justicia transicional

27. Sin embrago, el uso de diversas acciones judiciales como tácticas dilatorias, sumando más de 70, particularmente recursos de amparo en diferentes instancias,

[2] Corte de Constitucionalidad. Opinión consultiva emitida por solicitud del Congreso de la República, Gaceta No. 37, expediente No. 199-95, página No. 9, resolución: 18-05-95.

[3] Los comentarios se han ordenado de acuerdo a la estructura del informe.

buscó la obstrucción de la justicia. Sólo 10 días después de haberse emitido la sentencia, la CC ordenó anular todo lo actuado en la fase inicial del debate, generando la anulación de dicha sentencia. Se fijó como posible fecha de reanudación del proceso el 5 de enero de 2015. Esta situación ha afectado el derecho a la justicia de las víctimas, que han esperado 30 años para obtenerla, y menoscaba la certeza jurídica. En este contexto, el caso fue presentado por los querellantes a la Comisión Interamericana de Derechos Humanos (CIDH).

La Corte de Constitucionalidad resolvió anular el juicio por razones jurídicas expuestas en la sentencia dictada, la cual debe respetarse. La Oficina del Alto Comisionado no debe, ni puede calificar con ligereza el contenido de una sentencia de la más alta Corte del país.

30. Con una afirmación inequívoca, en agosto, la CC reconoció la inadmisibilidad de las disposiciones de amnistía y prescripción de la acción penal de graves violaciones a los derechos humanos, conforme a obligaciones internacionales del Estado. La Alta Comisionada espera que se mantenga esta tendencia jurisprudencial, ya que se encuentra pendiente una decisión sobre si en el caso de Ríos Montt debería aplicarse la Ley de Reconciliación Nacional, que no admite amnistías para genocidio, crímenes de lesa humanidad y otros delitos internacionalmente reconocidos, o una ley de amnistía anterior y más amplia (Decreto 8-86).

El Estado de Guatemala manifiesta que debe tomarse en cuenta que de conformidad al orden constitucional, el Organismo Judicial, sus magistrados y jueces así como la Corte de Constitucionalidad en calidad de último y superior tribunal, son independientes en el ejercicio de sus funciones y ninguna otra autoridad puede intervenir en la administración de justicia, asimismo, resalta que dentro de su legislación interna el Decreto 145-1996 Ley de Reconciliación Nacional, emitido el 27 de diciembre de 1996, como parte de los Acuerdos de Paz, y suscrito entre el grupo insurgentes y contrainsurgentes, y con la participación de Naciones Unidas, forma parte de los recursos legales internos, en su artículo 1, establece que "La presente ley en su totalidad es un instrumento básico para la reconciliación de las personas involucradas en el enfrentamiento armado interno…".

El alcance de la amnistía y de las excepciones contenidas en la misma, son resueltos por las autoridades judiciales competentes y de conformidad con el ordenamiento jurídico, sin que pueda obviarse que en materia penal debe observarse el principio de irretroactividad de la ley penal, contenido en las Convenciones internacionales de derechos humanos y tampoco puede obviarse la fecha en las que las convenciones que limitan amnistías o prescripciones entraron en vigor para Guatemala.

El Gobierno de Guatemala solicita la omisión de la frase "menoscaba la certeza jurídica"; así como el pensamiento "La Alta Comisionada espera que se mantenga esta tendencia jurisprudencial, ya que se encuentra pendiente una decisión sobre si en el caso Ríos Montt debería aplicarse la Ley de Reconciliación Nacional…" en virtud que el Gobierno considera que la Oficina de la Alta Comisionada debe abstenerse de asumir posiciones frente a resoluciones de la Corte de Constitucionalidad en virtud que el proceso que se lleva contra Efraín Rios Mont no ha finalizado, y este tipo de postura o pronunciamientos puede incurrir en indebida injerencia en los asuntos internos de Guatemala, que pueden afectar el debido proceso y derecho de defensa.

33. Continuaron las amenazas a operadores de justicia, sin que se registraran avances en la investigación y persecución penal de estos casos, lo que refleja la necesidad de fortaleces la Unidad de Operadores de Justicia del MP. Esta situación se presentó particularmente en contra de jueces, fiscales, víctimas y testigos en el contexto del juicio por genocidio. La Fiscal General también sufrió ataques constantes y campañas mediáticas encaminada a desprestigiar su trabajo. Tres magistrados

sufrieron ataques públicos por emitir resoluciones apegadas a los estándares internacionales de pueblos indígenas (párr. 63). En febrero, fue asesinada la abogada Lea de León, quien litigaba casos de alto impacto y riesgo social.

En torno a diversos criterios u opiniones vertidas en el ejercicio del derecho de libertad de expresión, estas no puede considerarse campañas mediáticas. El gobierno no hace o autoriza las publicaciones, simplemente garantiza el derecho a la libre expresión sin pronunciarse sobre contenidos. La Fiscalía investiga los atentados contra periodistas y articula el apoyo de todos los Ministros de seguridad. Los comentarios o declaraciones no obedecen en ningún momento a la política del gobierno, el que reconoce la importancia de la labor que realizan los jueces o la Fiscal General en el país, a la cual le da debido acompañamiento, por lo que se solicita a la Alta Comisionada considerar lo manifestado en el presente párrafo.

38. El sistema penitenciario continuó sin atender el aumento en el número de privados de libertad, agudizándose aún más la situación de hacinamiento (153 %). Más del 50 % de los detenidos están en una condición de detención preventiva (7,445 hombres y 894 mujeres). En los últimos cinco años se duplicó el número de mujeres en detención (de 650 en 2008 a 1,452 al 31 de agosto de 2013).

Como se reconoce en el párrafo 18, página 7 de este informe, el Estado de Guatemala desea ampliar la información en relación a este párrafo, en consideración a los esfuerzos que actualmente realiza el gobierno de Guatemala, en torno a que la sobrepoblación carcelaria provocada por aumento del crimen transnacional, por mayor acción policíaca, del Ministerio Público y judicial, como causales del hacinamiento y provocando que en algunos centros se dé la convivencia de personas cumpliendo condena y personas en prisión preventiva. Por tal razón en el primer trimestre de 2013, se elaboró un plan de deshacinamiento con el objetivo de acelerar la preparación de expedientes de las personas privadas de libertad. El plan incluye la recuperación de espacios en las tres granjas de cumplimiento de condena, donde existen módulos con capacidad de albergar más personas, en estos módulos funcionaban talleres de trabajo para beneficio de unos pocos; por lo que, se reubicaron y se está en el proceso de remozamiento y adecuación de los mismos para ser utilizados. De la misma forma se proyecta la planificación y diseño de la construcción de módulos con capacidad para cien personas.

Y con el fin de acelerar los procesos, se estableció una mesa de trabajo institucional de alto nivel donde participan la Fiscal General del Ministerio Público, el Presidente del Organismo Judicial, la Directora del Instituto de la Defensa Pública Penal, el Director General del Sistema Penitenciario y el Ministerio de Gobernación con el objetivo de establecer la creación de un Juzgado de Ejecución en el complejo penitenciario de Fraijanes en las cercanías de la granja de cumplimiento de condena Pavón. Adicionalmente el sistema penitenciario ha fortalecido los equipos multidisciplinarios de los centros de cumplimiento de condena para la preparación de los expedientes de las personas privadas de libertad acreedoras al beneficio de la redención de penas o al cumplir la totalidad de la condena.

39. Continuo la corrupción y falta de control de las autoridades dentro de los centros penitenciarios, permitiendo que redes delincuenciales operen tanto al interior como al exterior de los mismos. Fueron notorios los casos de un recluso condenado por el asesinato de Monseñor Gerardi en 1998, quien fue sorprendido por las autoridades fuera del centro penitenciario donde cumple su sentencia, así como la masacre de Nacahuil, presuntamente ordenada en un centro de detención.

El Estado de Guatemala, solicita a la Alta Comisionada, reconsiderar la afirmación que se hace en este párrafo, toda vez, que no evidencia las acciones realizadas por el Ministerio de Gobernación a través de la Dirección del Sistema Penitenciario para el

control de los centros penitenciarios y contrarrestar la corrupción a través de requisas, cambio de autoridades y guardias penitenciarios dentro del Sistema.

40. A pesar de la creación en 2012 de la mesa interinstitucional para dar cumplimiento a las medidas cautelares dictadas por la CIDH a favor de las personas con discapacidad mental internadas en el Hospital Nacional de Salud Mental Federico Mora, y los esfuerzos de la Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (COPREDEH), la infraestructura y las condiciones de nutrición y salud de los internos continúan siendo preocupantes.

Dentro de esos esfuerzos reconocidos se tome en cuenta que el Estado de Guatemala: a) está remodelando el hospital para que cumpla con los estándares de tratamiento, separando provisionalmente, en el propio hospital, a las personas con discapacidad mental sujetos a proceso penal; b) tiene abierto un proceso de contratación para la construcción de un centro de detención especial por un monto aproximadamente de Q21 millones. Se suscribió un acuerdo entre el Organismo Judicial, Ministerio Público, COPREDEH, Ministerio de Gobernación, Sistema Penitenciario, Defensoría Pública Penal, Instituto Médico Forense, Procuraduría General y Vicepresidencia de la República para dar seguimiento a los casos de personas con enfermedad mental que enfrenten acusación de cometer delito o falta.

A través del "Acuerdo de Cooperación Técnica entre la Organización Panamericana de la Salud/Organización Mundial de la Salud y la Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos – COPREDEH", suscrito el 30 de julio de 2013, se obtuvo asesoría técnica con el fin de presentar ante Congreso de la República para su aprobación, una iniciativa de ley sobre salud mental y la elaboración de una estrategia para la incorporación del componente de salud mental en la atención primaria de salud.

Así mismo para el cumplimiento de la Medida Cautelar se celebró un nuevo convenio para mejorar la calidad de vida de los pacientes del Hospital Nacional de Salud Mental, "Convenio de Cooperación Interinstitucional entre la Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos – COPREDEH –, el Ministerio de Salud Pública y Asistencia Social, el Ministerio de Desarrollo Social y el Ministerio de Gobernación en el marco de la implementación y cumplimiento de la Medida Cautelar MC-370-12 otorgada por la Comisión Interamericana de Derechos Humanos – CIDH – a favor de los pacientes internos del Hospital Nacional de Salud Mental", suscrito el 30 de septiembre de 2013, el cual tiene la finalidad de realizar el mejoramiento de todos los pabellones existentes dentro del Hospital, construcción de un nuevo pabellón y de un segundo muro perimetral, para llevar a cabo la separación efectiva de los pacientes y el retiro de las fuerzas armadas de las instalaciones del Hospital Nacional de Salud Mental.

Para el cumplimiento del convenio el Estado asignó para el proyecto de ejecución la cantidad de diez millones de Quetzales (Q.10,000,000.00).

Para el efecto la Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos – COPREDEH – ya ha realizado la transferencia de diez millones de Quetzales (Q.10,000,000.00) al Ministerio de Desarrollo Social para cumplir los fines del convenio a través del Fondo de Desarrollo Social.

Capítulo V: Seguridad[4]

42. A pesar de la recomendación de la Alta Comisionada sobre el uso excepcional y temporal del Ejército en tareas de seguridad interna bajo control civil, se incrementó, con resultados insatisfactorios, el uso combinado de fuerzas militares con la policía en varias zonas del país.

El Estado solicita el cambio del término "escuadrón", en virtud que el término correcto es brigada así como indicar que cada una está compuesta aproximadamente con 500 efectivos cada una, y para el caso de Totonicapán corresponde a una unidad de apoyo a la seguridad civil, no un escuadrón como lo indica.

El Estado de Guatemala ve con preocupación la relación que la Oficina de la Alta Comisionada realiza ante los hechos ocurridos en Totonicapán y la instalación de brigadas en los departamentos de Escuintla, Huehuetenango y Zacapa, en virtud, que estas acciones no tienen relación alguna. La instalación de brigadas en estos departamentos responde a altos índices delincuenciales, persecución del crimen organizado transnacional, como narcotráfico, trata de personas y contrabando.

Capítulo VI: Defensores de derechos humanos

46. Durante el año fueron allanadas ilegalmente, sustrayendo equipos de cómputo y documento las oficinas de la Asociación para el Avance de las Ciencias Sociales (AVANCSO) y del Instituto Centroamericano de Estudios para la Democracia Social (DEMOS), en la cual trabaja el Relator Especial de las Naciones Unidas para la promoción y protección del derecho a la libertad de opinión y expresión. También se denunció el allanamiento del domicilio del abogado del Centro de Acción Legal Ambiental y Social (CALAS). Si bien en los primeros dos casos se detuvo a los presuntos autores, en el tercer caso no se registraron avances en la identificación de responsables y del móvil del allanamiento.

El Estado de Guatemala, considera inadecuado lo manifestado por la Oficina de la Alta Comisionada en Guatemala, sobre el caso del Instituto Centroamericano de Estudios para la Democracia Social (DEMOS). El Ministerio de Gobernación a través de la Sección contra Robos y Atracos de la Subdirección General de Investigación Criminal, informa que según las investigaciones efectuadas, los hechos suscritos pudieran atribuirse a un caso de delincuencia común. El 1 de septiembre del año en curso se procedió a la aprehensión de cinco hombres cuyo modus operandi es saquear comercios utilizando para el efecto herramientas de albañilería con la cual abren boquetes[5].

El Estado de Guatemala, desea ampliar la información respecto a la denuncia de allanamiento del domicilio del abogado del Centro de Acción Legal Ambiental y Social (CALAS), en este sentido la Fiscalía de Derechos Humanos del Ministerio Público se encuentra investigando los hechos ocurridos el 19 marzo y 3 de abril de 2013. Sin embargo es oportuno que se observe que la acción penal del Ministerio Público, no se interrumpe y esta continúa no obstante que los eventos ocurridos en la residencia del señor Maldonado Flores se tratan de delitos dependientes de instancia particular. (Artículos 24 Ter, 297, 285 y 309 del Código Procesal Penal Decreto 51-92 y sus reformas).

49. A pesar de los esfuerzos de varias instituciones para restituir su papel, la Instancia de Análisis de Ataques a Defensores perdió trascendencia. Los

[4] Párrafo 42 de la versión final del Informe de la Oficina del Alto Comisionado de Derechos Humanos del Sistema de Naciones Unidas, 2014.

[5] Ministerio de Gobernación amplió su informe a través del Primer Viceministro Ref: 1VM-3,235-2013/EBJP/ommg.

representantes de las instituciones participantes en la Instancia fueron reemplazados por técnicos, lo que contribuyó a que algunas organizaciones de la sociedad civil decidieron abandonar el espacio. En respuesta al asesinato de cuatro periodistas, el gobierno creó un mecanismo específico de protección para este colectivo con el acompañamiento de la UNESCO y la OACNUDH-Guatemala.

El Estado de Guatemala considera inadecuado lo manifestado por la Oficina de la Alta Comisionada, respecto a la Instancia de Análisis de Ataques a Defensores, ya que en la actualidad se suscribió un Convenio Interinstitucional entre Comisión Presidencial coordinadora de la Política del Ejecutivo en materia de Derechos Humanos – COPREDEH – Ministerio Público y Ministerio de Gobernación para participar en la Instancia y fomentar su institucionalización. Además de ello, se ha reestructurado y fortalecido la Unidad de Casos Especiales y Violaciones a Derechos Humanos y Esclarecimiento Histórico, dentro de la cual funciona la Unidad Especial para la Protección de Activistas y Defensores de Derechos Humanos del Ministerio Público.

Esta instancia se reúne una vez por semana, se integra con representantes de organizaciones de Derechos Humanos, COPREDEH, Ministerio de Gobernación, Ministerio Público, para garantizar que se investigue y si procede persiga penalmente. Adicionalmente se propuso por parte de COPREDEH al Procurador de los Derechos Humanos un mecanismo adicional, en el que actuando, por su credibilidad como receptor de denuncias, convoque a COPREDEH y al Ministerio de Gobernación para acordar las medidas de protección.

Se han sostenido 42 reuniones semanales de manera permanente y sistemática (enero-octubre/2013), con participación del Ministerio Público, COPREDEH, Ministerio de Gobernación, con el acompañamiento en su calidad de observador de la Oficina de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos con sede en Guatemala y organizaciones de defensores de derechos humanos; reuniones en las cuales se han evaluado y analizado un total de 215 casos, atendidos por la Fiscalía de Sección de Derechos Humanos del Ministerio Público, a través de las Unidades Fiscales de Delitos contra Periodistas, Activistas, Sindicalistas y Operadores de Justicia. Estas reuniones semanales de la Instancia de Análisis permiten bajo garantía de confidencialidad, aportar elementos a las investigaciones realizadas por el Ministerio Público.

Capítulo VII: Derechos de las mujeres

50. La puesta en marcha del Gabinete Específico de la Mujer empezó a impulsar la coordinación interinstitucional a favor de los derechos de las mujeres. Asimismo, se empezaron a activar las unidades de género en los Ministerios y Secretarías, las cuales asesorarán al Ejecutivo en la definición de las políticas de género. Sin embargo, es preocupante que el Consejo Nacional para Prevenir la Violencias y los Centros de Apoyo Integral para Mujeres Sobrevivientes de Violencia (CAIMUS) no contaran con el apoyo político y financiero suficiente para cumplir con su mandato.

La Coordinadora Nacional para la Prevención de la Violencia y los Centros de Apoyo Integral para Mujeres Sobrevivientes de Violencia, cuentan con el debido apoyo político y financiero, y su funcionamiento se encuentra presupuestado dentro del Tercer Viceministerio de Gobernación y regulado administrativamente por la Secretaría Presidencial de la Mujer. Dicho apoyo se ve fortalecido con el dentro del segundo considerando del Acuerdo Ministerial 300-2013, que se refiere en pie de página el Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos, sobre las actividades de su Oficina en Guatemala.

De este modo y para un debido y eficaz funcionamiento en tan importante apoyo para la mujer, el Estado de Guatemala realiza una evaluación y reordenamiento que permite

velar por el cumplimiento y atención a la mujer víctima de violencia, dentro de una política de transparencia.

Capítulo VIII: Derechos de los pueblos indígenas

En cuanto a este apartado (Capítulo VIII, párrafos 56-64) se considera necesario que la Alta Comisionada tome en consideración relevante el trabajo de diálogo en las comunidades indígenas para poder llegar a acuerdos y consensos de interés general, esto partiendo de que el diálogo requiere de principios, definir metas, observar cualidades, es decir, definir actitudes personales y del grupo y, desde luego, una serie de conductas, entre las cuales es de singular importancia la aceptación de las ideas y opiniones de los otros en un sistema de tolerancia.

El Estado de Guatemala a través del Sistema Nacional de Diálogo el cual es un instrumento que busca desarrollar una gestión pública democrática, representativa y participativa ha propiciado la participación y la co-responsabilidad ciudadana en la gestión de política pública a todo nivel y en todo el territorio nacional en la búsqueda e implementación de soluciones a las principales problemáticas del país, llevando a cabo mesas de diálogo en los temas de Consultas y Minería destacando:

- Consulta en el Departamento de San Marcos, Comitancillo;
- Consulta en el Departamento de Totonicapán, Momostenango;
- Consulta en el Departamento de Quiché, Uspantán;
- Consulta en el Departamento de Guatemala, San Juan Sacatepéquez;
- Consulta en el Departamento de Zacapa, Río Hondo;
- Consulta en el Departamento de Izabal, Livingston.

Acerca de la omisión que se tuvo, en la formación de la Ley de Minería, de realizar la consulta previa a las comunidades indígenas en general, es preciso distinguir entre la consulta como el derecho fundamental regulado en la constitución cuando se toman medidas (legislativas y administrativas) o cuando se vayan a realizar proyectos, la cual es una consulta a todos los pobladores en un municipio o nacional y la consulta del Convenio 169 que es la Consulta a los Pueblos indígenas. Esta consulta no vinculante que busca que las decisiones de gobierno sean bien informadas.

Con respecto a la Consulta del Convenio 169, el Ministro de Trabajo está elaborando una propuesta de ley y reglamento que será presentada al Congreso.

El Presidente en junta de Gabinete de gobierno recibió a la Directora de la OIT y al Ministro Peruano encargado de las Consultas de la OIT para intercambiar puntos de vista con la OIT y el único Estado que ya cuenta con ley y reglamento sobre las consultas. El Ministro de Trabajo ha iniciado consultas a nivel nacional para definir los contenidos de la ley y reglamento.

De esta misma reunión la Directora de la OIT manifestó su satisfacción por la realización de este encuentro con el gabinete pues "los gobiernos, como principales ejecutores de las acciones de los Estados, tienen un papel determinante en estas discusiones y en la generación de soluciones a los problemas relacionados con la aplicación del Convenio".

En otras actividades, sobre el mismo tema, realizadas en la capital del Estado de Guatemala participaron los especialistas de la oficina de la OIT para Centroamérica, Haití, Panamá y República Dominicana en actividades con los empleadores (ACTEMP), Lorenzo Peláez, en actividades con los trabajadores (ACTRAV), Oscar Valverde, y la especialista en normas, Tania Carón.

Según las consideraciones en cuanto al tema de consultas se ha hecho la exhortación al Congreso de la República para que proceda a discutir y preparar legislación complementaria que efectivice el derecho de consulta de los pueblos indígenas.

El Estado de Guatemala a través del Ministerio de Trabajo ha desarrollado la mesa interinstitucional en el tema de Pueblos Indígenas dentro de la cual participan las siguientes instituciones, Ministerio de Cultura de Deportes, Comisión Presidencial contra la Discriminación, Academia de Lenguas Mayas, Ministerio de Ambiente y de Recursos Naturales y el Ministerio de Energía y Minas. Y que se encuentran en el Congreso de la República de Guatemala las iniciativas pendientes de conocer por el pleno siendo éstas la Ley Reguladora del Procedimiento Consultivo o Consulta Popular, registrada con el número 3413 y la Ley de Consulta a los Pueblos Indígenas, registrada con el número 3684.

Capítulo IX: Derechos Económicos y Sociales

69. Pese a estos avances, la PDH constató la persistencia de serios obstáculos en la implementación del Plan Hambre Cero en algunos de los municipios más pobres y alejados, como falta de medicinas y micronutrientes o la insuficiente dotación de personal de salud. El programa "Mi Bono Seguro" del Ministerio de Desarrollo Social registró una baja ejecución presupuestaria (52 % a noviembre), así como el retraso en las entregas de las transferencias condicionadas. Para lograr sus objetivos, el Plan deberá enfocarse en los factores estructurales que contribuyen a la desnutrición, incluyendo la producción de alimentos, la generación de ingresos, el pago del salario mínimo, y el mejoramiento de la infraestructura rural. A estos factores hay que sumar el impacto que tuvo este año la plaga de roya sobre el cultivo de café; se estima que el 75 % de los jornaleros y el 77 % de los pequeños caficultores se encuentran en situación de inseguridad alimentaria.

Es conveniente estimar que el Estado de Guatemala reconoce los obstáculos que se han encontrado, sin embargo está comprometido a continuar trabajando y redoblando esfuerzos para enfrentar los problemas que se encuentren dentro de la inseguridad alimentaria y nutricional, ya que es uno de los ejes principales de Gobierno a través del Pacto Hambre Cero y se espera que con el Reglamento del Comité Técnico Interinstitucional se logre una óptima integración de procesos de manera conjunta con las instituciones involucradas en llevar a cabo el Pacto Hambre Cero.

En relación al programa "Mi Bono Seguro" el Gabinete de Desarrollo Social con el fin de transparentar y hacer una eficiente entrega de este beneficio y a manera de realizar una estructura eficaz para la entrega, se evaluó el avance del Registro Único de Beneficiarios (RUB) en donde se exhorta a las instituciones involucradas para la ejecución del programa a integrar un listado de las personas beneficiadas con programas de asistencia social.

70. En el marco de una misión de la OIT y del tratado de Libre Comercio entre la República Dominicana, Centroamérica y los Estados Unidos se adoptaron medidas para mejorar el cumplimiento de los derechos laborales. El Ministerio de Trabajo y Previsión Social adoptó medidas para mejorar los procesos de fiscalización en aéreas críticas. Sin embargo, dado que no se prevé un incremento sustancial del presupuesto de la Inspección General de Trabajo (IGT) para el 2014, la implementación de estos instrumentos se verá limitada.

El Estado de Guatemala cree pertinente que en relación a este tema debería estimarse que el presupuesto para el año 2014, no fue aprobado por el Congreso de la República, por lo que sigue vigente el presupuesto aprobado en el año 2013.

71. El Ministerio de Trabajo y Previsión Social realizó inspecciones a empresas agrícolas, maquiladoras y de seguridad, así como sectores con altos índices de trabajo

infantil. En el caso de las empresas agrícolas se constató que el 22 % no pagaban el salario mínimo y que el 20 % no habían inscrito a sus trabajadores en el Instituto Guatemalteco de Seguridad Social (IGSS). De las 1,386 empresas de seguridad inspeccionadas en 2013, 1,042 no pagaban el salario mínimo y 843 no inscribieron a sus trabajadores en el IGSS.

El Estado de Guatemala, desea ampliar información sobre las acciones que se han implementado para atender la situación descrita en el párrafo anterior donde el Ministerio de Trabajo y Previsión Social en conjunto con instituciones de gobierno, organismos internacionales y representantes del sector privado, promueven la modificación del acuerdo Gubernativo 347-2002, con el objetivo de permitir la participación de otras dependencias del Estado que permitan contribuir a la Comisión Nacional para la Prevención y Erradicación del Trabajo Infantil en la detección de áreas que reporten alto índice de trabajo infantil para ser incluidas en la Hoja de Ruta establecida para el periodo 2013-2016, elaborada con el apoyo de la Organización Internacional del Trabajo.

El Estado de Guatemala a través de la Comisión Nacional del Salario, con representación del sector privado, sindical y estatal, analiza y estudia propuestas de manera tripartita para el aumento del salario mínimo para el año 2014.

Así mismo el Gobierno de Guatemala comprometido a la creación de empleos, en el año 2012 a través del Ministerio de Trabajo y Previsión Social lanzó la Política de Creación de Empleo Decente y de Calidad 2012-2021, destacando dentro de sus ejes principales el velar por el cumplimiento laboral y atraer mayor inversión extranjera y local; teniendo mayor presencia y fuerza en la Inspección General de Trabajo orientando a las empresas a un cumplimiento eficaz de los derechos laborales, promoviendo una inspección laboral preventiva.

72. No hubo avances en el sector de trabajo domestico donde más del 60 % de las empleadas ganaba menos del salario mínimo; 98 % trabajaba sin contrato, y solo un 1 % estaban afiliadas al IGSS. Es necesaria la ratificación del Convenio 189 de la OIT y la reforma al Código de Trabajo para eliminar el trato discriminatorio.

El Estado de Guatemala cree conveniente tomar en cuenta que el Ministerio de Trabajo y Previsión Social presentó una iniciativa de ley por medio de la cual se reforma el Código de Trabajo, Decreto No. 1441 del Congreso de la República cuyo objetivo primordial es el respetar la normativa laboral por parte de los sujetos del Derecho de Trabajo, garantizando el cumplimiento de las obligaciones y el respeto de los derechos de los trabajadores, patrono y demás sujetos en cuanto a derecho laboral guatemalteco, que se encuentran dentro del régimen jurídico del país, estableciendo mayor eficacia dentro de los procesos laborales que garantizan su legalidad. La presente iniciativa fue presentada al Pleno del Congreso de la República de Guatemala quien la conoció el 7 de noviembre del 2013.

75. Los rezagos existentes en el disfrute del derecho a una vivienda adecuada se evidenciaron en el importante déficit habitacional existente (1,501,166 viviendas), así como en los más de 400 asentamientos urbanos en situación irregular. La dotación presupuestaria del Fondo para la Vivienda (FOPAVI), resultó insuficiente para atender esta situación.

76. El caso de "La Palangana", relativo a la reubicación de 470 familias que ocupaban un terreno en la capital, evidenció los retos de la implementación de la Ley de Vivienda. Únicamente 254 de estas familias lograron beneficiarse del programa de subsidio de vivienda del FOPAVI; sin embargo, por problemas administrativos, no se realizaron las labores planeadas de construcción y dichas familias tuvieron que vivir en un periodo en condiciones inadecuadas.

El Estado de Guatemala desea ampliar la información reportada en el presente párrafo en el sentido de que el Gobierno de Guatemala a través del Ministerio de Comunicaciones, Infraestructura y Vivienda, de acuerdo al "Programa de construcción y distribución de viviendas" cumplió con la meta propuesta de entrega y construcción de 15,000 viviendas para el presente año, y se tiene proyectado realizar la construcción de 20,000 para el 2014 para familias con dichas necesidades.

XIII. Recomendaciones

El Estado de Guatemala en relación a las recomendaciones emitidas por la Oficina del Alto Comisionado de Naciones Unidas en su informe sobre las actividades de su oficina en Guatemala, solicita:

a) La escritura completa de los nombres de las instituciones mencionadas dentro de las recomendaciones para garantizar la correcta traducción de dicho informe;

b) En relación a los temas de Seguridad y Justicia, Defensores de Derechos Humanos, Mujeres y Niñas, el Estado de Guatemala solicita sustituir la expresión "hace un llamado" por "se recomienda", asimismo el término de "Gobierno" por "Estado" tomando en cuenta que son recomendaciones al Estado de Guatemala y no a un gobierno en específico;

c) El Estado de Guatemala considera importante resaltar que dentro del texto de las recomendaciones sobre incremento de presupuesto, recursos, reformas legislativas convendría incorporar al Congreso de la República, para identificar responsabilidad y visualizar la independencia de ambos organismos;

d) Sobre el tema de Mujeres y niñas, el Estado de Guatemala solicita cambiar el texto del informe a: "dotar de recursos a los juzgados y tribunales especializados con competencia de Femicidio y otras formas de violencia con la mujer y ampliar su cobertura".

United Nations A/HRC/25/G/9

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Human Rights Council
Twenty-fifth session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Comments received from the Permanent Mission of Sri Lanka on the draft report of the Office of the United Nations High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka (A/HRC/25/23)*

* Circulated as received, in the language of submission only.

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[English only]

I. General observations

1. This may be read without prejudice to the Government of Sri Lanka's (GOSL) position of rejection of resolution 22/1. The GoSL wishes to observe that the mandate of Resolution 22/1 is placed within the broad parameters of requesting the GoSL to implement the recommendations of the LLRC. The High Commissioner's draft Report to HRC 25 (A/HRC/25/23) however goes beyond the mandate granted by resolution 22/1 in making reference to and recommendations on numerous issues extraneous to the resolution under reference, as well as in its request to establish an international inquiry mechanism to further investigate alleged violations. Additionally, the recommendations are arbitrary, intrusive and of a political nature, and are not placed within the ambit of the LLRC as mandated by 22/1. The GoSL wishes to respectfully submit that the above is in contravention of the rules of procedure governing the conduct of the Council as stipulated in GA resolution 60/251 and HRC resolutions 5/1 and 5/2.

2. The GoSL wishes to request the OHCHR to delete references to the discredited UNSG's Panel of Experts (POE) Report on Sri Lanka contained in the paragraphs 6, 47, 65, 71, and in footnotes 30 and 44, as well as the full link to the POE Report given in the two footnotes under reference, for the following reasons:

(a) The POE was not referred to in the Resolution 22/1 on Promoting Reconciliation and Accountability in Sri Lanka and therefore alluding to it in the Report A/HRC/25/23 clearly takes it beyond the scope and mandate of Resolution 22/1;

(b) The POE Report on Sri Lanka which was commissioned by the UN Secretary General was the culmination of a private consultation that the latter sought for his own advice, and is not the product or request of the UN Human Rights Council, the UN General Assembly or any other UN body. As it has not received the endorsement of the intergovernmental process, it has neither credence nor legitimacy within intergovernmental for a;

(c) The POE's mandate did not extend to fact finding or investigation. In its Report, the three-member Panel also makes it clear that the assertions set out therein remain unsubstantiated and require a higher standard of proof;

(d) For the above reasons, the GoSL does not extend any credence or legitimacy to the POE Report and protests reference to it in the Council, and particularly in this instance where it is clearly not mandated by the Council;

(e) It may be further noted that the POE though invited by the LLRC to make representation to the Commission, chose not to present themselves before the Commission for reasons best known to them.

II. Engagement by OHCHR and Special Procedures of the Human Rights Council

3. Sri Lanka has consistently interacted with the United Nations system and the wider international community in a spirit of goodwill and cooperation. It is in this context that Sri Lanka remains committed to a positive engagement with the OHCHR and Special Procedures Mandate Holders of the Human Rights Council.

4. In pursuance of this objective, Sri Lanka facilitated an advance mission by officials of the OHCHR to Sri Lanka in 2012 which was followed by the visit of the High Commissioner for Human Rights which took place from 25-31 August 2013, pursuant to an invitation extended by GOSL in early 2011. By the High Commissioner's own admission it was her "longest visit", and while in Sri Lanka she was able to "go anywhere and see anything" that she "wished to see" including the former conflict-affected Northern and Eastern provinces; she had the opportunity to call on the President and have candid discussions with senior Cabinet Ministers, Government officials and opposition MPs. She also noted that she was able to meet independently with a wide range of civil society representatives and attend events organised by civil society activists and organizations. Hence, there was legitimate expectation that the High Commissioner would adopt an objective and unbiased approach to the country. It is unfortunate that this has not been the case.

5. The GoSL has continued its engagement with Special Procedures, and its Permanent Representative in Geneva has engaged in a regular dialogue with them including the SR on Truth, Justice, Reparation and Guarantees of Non-recurrence Mr. Pablo de Greiff and the SR on Extrajudicial, Summary, or Arbitrary Executions Mr. Christof Heyns. The GoSL has also conducted regular meetings with the Working Group on Enforced or Involuntary Disappearances (WGEID), including with senior representation from Sri Lanka's Attorney General's Department. Since January 2012, the GoSL has transmitted responses on 842 cases to the Working Group. Additionally, an Inter-Agency Task Force has been established to respond to the Working Group. Further, at the meeting with the WGEID it has been informed that the latter's request to visit is under consideration as with other similar requests, which will be processed as mutually convenient and taking into account national imperatives.

6. The GoSL has already informed the Human Rights Council, it will continue to schedule pending visits of Special Procedures mandate holders to Sri Lanka following the visit of the High Commissioner. In line with this commitment, the GoSL has extended three invitations to Special Procedures since August 2013 and the SR on Human Rights of IDPs, Dr Chalokya Beyani visited Sri Lanka in December 2013.

7. As previously committed at the UPR, the GoSL agreed to implement recommendations of the LLRC in line with the NPoA, and also make available financial and other resources for same. Additionally, Sri Lanka made 19 voluntary commitments in relation to the UPR. The GoSL is of the view that the UPR second cycle on Sri Lanka is an appropriate context to explore avenues for technical cooperation. High Commissioner's letters to GoSL containing, inter alia, offers of technical assistance in specific areas were received on 31 October 2013. In this context, it is observed that in keeping with HRC Resolution 5/1, offers of technical assistance need to be made in consultation with and with the concurrence of the receiving State. The GoSL remains open to consideration of technical cooperation from the OHCHR in some key areas of reconciliation, in line with the needs of the country, in the context of implementing the accepted recommendations of its UPR 2nd cycle. Sri Lanka has also undertaken commitments on technical cooperation under the UN Development Assistance Framework 2013-2017.

8. Under Section II of the High Commissioner's Report, she has additionally raised concerns regarding a range of issues based on information of questionable veracity and arrived at conclusions in a selective and arbitrary manner.

9. Unlike some other countries, Sri Lanka does not have compulsory military service or conscription. Even at the height of the armed conflict, the GoSL did not resort to any conscription into the armed forces. Sri Lanka adheres to an "All Volunteer" concept and thus enlistment to the armed forces is entirely at the free will of citizens. Under the Sri Lanka law, the supreme legislative organ, the Parliament, is entrusted with the power to

raise and maintain armed forces. Sri Lanka's military is a disciplined entity tasked to protect the country's territorial integrity, maritime boundary, national strategic interest and overall safety and security of the nation and its citizens. Therefore, considering the national security requirements and threat perception, the size of the armed forces is evaluated from time to time. Strength and size of the armed forces and their deployment is a matter exclusively vested with an independent sovereign state. It is not the mandate of the High Commissioner for Human Rights of the UN to call for the demobilization and disarmament of the military of a sovereign State and set timelines for same and the GoSL wishes to emphasize that it does not intend to disarm or demobilize its military. The GoSL continues to evaluate and rationalize military presence according to national security imperatives. The timelines for such activities correlates directly to the threat perceptions of the GoSL to national security and is one which evolves as situations unfold.

10. Following the termination of military operations against the LTTE in 2009, the GoSL has undertaken a gradual process of reduction of military presence in former conflict affected areas. It may be noted that the total strength of the military in the Northern Province has been reduced by approximately 30% from 2009 to October 2013, a process which is continuing to take place. In addition, in the Eastern Province approximately 26% reduction of troop presence has been undertaken. Also 50% of the troops have been deployed in areas which were not affected by the conflict.

11. The following concrete steps taken by the GoSL can be highlighted in this regard:

(a) The former High Security Zones (HSZs) have ceased to exist. The Palaly Cantonment is now the only area in which some security restrictions remain, but even within the Cantonment, civilians have unrestricted access to the airport at Palaly and the Kankesanthurai harbour. Action is also being taken to release lands within the Cantonment area for agricultural and religious activities;

(b) While it is true that there are still some civilian properties included in the Cantonment, it must be stressed that civilians have not occupied these properties for the last twenty to twenty-five years. The Government has taken measures to pay compensation to the owners of these properties and to provide alternate land to them. It should also be noted that lands that had been forcefully taken from the people and occupied by the LTTE for many years have also been released to their legal owners. The former HSZ in the Eastern Province located in the Sampur area from 2007 has been reduced in extent by 65% and declared a Licensed Zone under the Board of Investment;

(c) As at January 2014 the GoSL has released 19,322 acres of private land and 2,518 acres of State owned land in the Northern Province which were hitherto occupied by the military. In the East, the GoSL has released 689 acres of private land and 3,222 acres of State land. Therefore the total figure of lands released in the North and the East amounts to 20,011 acres of private land and 5,740 acres of State land;

(d) The full responsibility for Law and Order has been handed over to the Police. A new Ministry of Law and Order has also been created. 16 new Police Stations and 3 new posts have been established and recruitment of more Tamil speaking Police personnel (1,447) has taken place. Tamil language training is also being provided to additional numbers of Police personnel. 3,424 Police officials have been given Tamil language training in the period 2009 – 2012 and 409 Police officials have been given English language training during this same period. This is in line with the GoSL's overall policy of promoting trilingual competency among public officers;

(e) All schools in the Northern Province used by the Sri Lanka military have been handed over to civilian use. The schools occupied by the LTTE were renovated by the Government and handed over to the respective zonal directors of education which was only possible because the war ended;

(f) The military has no involvement in civilian administration. The civil administration system in the North and East is fully functional and discharging their duties. The culmination of this process was the successful conclusion of Provincial Council elections in the North in 2013 and the establishment of the Northern Provincial Council;

(g) The activities carried out by the Sri Lankan military are within the ambit of Civil Military Cooperation and are not intended to usurp the powers of civil administration. These activities are similar to post-conflict activities undertaken by military forces across the globe and involve reconstruction/renovation of houses, provision of adequate safe drinking water, construction of sanitary facilities, reconstruction of religious places for communities, improving access roads, irrigation projects etc. Whilst these were undertaken more intensively in the immediate post-conflict period, these activities have also become limited due to the strengthening of civilian institutions and their capacity to undertake such work.

12. As outlined above, the aforementioned meaningful steps have been taken by the GoSL which are a part of the process of reduction of the military presence in former conflict affected areas. Therefore, the assertion by the High Commissioner regarding demilitarization is erroneous and misleading. It seeks to create the impression that the presence of the military in these areas remains the same as during the conflict.

13. Given that for over 30 years the sovereignty and territorial integrity of the country was threatened by a terrorist group, the GoSL has legitimate concerns regarding resurgence of terrorist activity in the areas in which they were fully functional and therefore national security interests play a crucial role in decisions regarding the level of military presence in those areas in order to prevent any recurrence in the future.

14. In addition, there have also been repeated attempts, including by the High Commissioner, to draw a non-existent correlation between the presence of the military and vulnerability of women to sexual harassment and violence in the North. This position is not borne out by the available statistics. The GoSL in its statement to the 24th Council highlighted that a survey conducted covering the period 2007-2012 had revealed that of the reported incidents of sexual violence in the North a large majority were carried out by close relatives/ neighbors and only a very few could be attributed to the Security Forces. In all these cases involving Security Forces personnel disciplinary and legal action has been taken. The military has taken strict action to either discharge or award other punishments to these personnel. Furthermore, cases have been filed in civil courts, some of which are pending in Courts and with the AG's department.

15. Furthermore, the GoSL wishes to reiterate that there exists no basis for concerns as expressed by the High Commissioner with regard to presence of the security forces contributing to the vulnerability of women to sexual violence in the North. The GoSL deplores all acts of violence against women and girls and has taken concrete action against reported cases and will continue to do so. The GoSL requests the High Commissioner to provide factual evidence to substantiate this allegation and to refrain from making general comments without a degree of specificity which would allow the GoSL to investigate and respond in a comprehensive manner.

16. Sri Lanka had initiated action to prepare legislation with regard to Witness and Victim Protection. Consequent to extensive consultation in this regard, including examination by the Cabinet Sub Committee on Legislation and action being taken thereon by the Legal Draftsman, the finalization of legislation is in progress. The need for legislation for the criminalization of disappearances is being examined by a Committee appointed by the Ministry of Justice, in consultation with the Attorney General. Further, amending legislation to enhance existing provisions in the Penal Code and the ICCPR Act with regard to hate speech has been prepared.

17. Bilateral discussions are ongoing with regard to a truth seeking mechanism. With regard to reparation policies, they are entrenched in the existing domestic legislation. They are implemented through administrative and judicial processes.

III. Recent human rights developments

18. With regard to the High Commissioner's Oral Update at the 24th Session of the Council it may be recalled that the GoSL provided its observations on the issues referred to therein.

19. The GoSL rejects the assertion that there is an undermining of the independence of the judiciary. Administration of justice, inclusive of independence of the judiciary is constitutionally enjoined and any infringement of these entrenched rights is visited with sanctions. Judges hold office during good behavior and proven misbehavior or incapacity triggers constitutionally entrenched disciplinary proceedings. Any procedure adopted in this regard has been in accordance with the Constitution and such compliance with constitutional provisions cannot be regarded as undermining the independence of the judiciary.

20. It is mandatory for all INGOs and NGOs working in Sri Lanka to register with the NGO Secretariat which is under the Ministry of Defence & Urban Development. They are also required to submit comprehensive details on their proposed activities in the country. The incidents under reference in paragraph 15 are therefore not a reflection of militarization or involvement of the military in civilian functions. Drawing such a correlation is erroneous.

21. The statement attributed to the Secretary to the President about steps being taken to replace senior officials in the Northern Province with civilians is incorrect and it gives a misleading impression that military personnel are engaged in civil administration. All civil administration positions in the Northern Province are in fact occupied by civilians.

22. In addition to the substantial reduction of the military presence in the North and the East, the numbers of security barricades, road blocks and checkpoints have been reduced by 99 percent in these areas.

A. Former combatants and detainees

23. With regard to the numbers concerning rehabilitees and detainees referred to as having been provided by the GOSL to the High Commissioner during her visit, it may be noted that the GoSL has consistently provided updates to the HRC at the regular sessions on this matter.

24. The GoSL rejects the assertion that access to legal representatives of the detainees remains a matter of concern. Access is given not only to their legal representatives but also to family members, religious dignitaries, medical personnel and the ICRC. The Magistrates also visit the detainees regularly to ascertain their well-being. The presidential directives of 07th July, 2006 and reissued in 2007 remain valid to date. These directives protect the rights of the arrested person. Every member of the armed forces and the police force shall assist and facilitate the National Human Rights Commission of Sri Lanka (NHRCSL) and any person authorized by the NHRCSL in the exercise of its powers, duties and functions and also ensure that the fundamental rights of persons arrested or detained are respected.

25. In addition, legal aid is provided by the State at its expense for accused and appellants in the High Court and the Court of Appeal respectively, if they are unable to retain a lawyer of their choice. The Bar Association of Sri Lanka also assists persons with

legal aid mainly in forwarding Fundamental Rights petitions to the Supreme Court. Legal aid is also available for civil matters.

26. All detainees can challenge the lawfulness of the detention by way of Habeas Corpus in the High Court or Court of Appeal and also challenge such detention in the Supreme Court by way of a Fundamental Rights Application. As regards the fundamental rights applications it is noteworthy that complaints could be initiated by addressing a letter to the Supreme Court –the epistolary jurisdiction which has been developed by the Supreme Court.

27. Despite the tremendous advances being made in Sri Lanka, it needs to be understood that the international network of the LTTE still remains active. Before and during the war, this network enabled the LTTE to establish links through which it sustained terrorist activities in the country. This included, inter alia, the procurement of arms and financing of terrorist activities. In addition, they linked with media, international agencies and non-governmental organisations for propaganda purposes and financed electoral campaigns internationally. By inciting Tamil populations living abroad and courting influential opinion makers, the LTTE network creates a distorted picture about developments in Sri Lanka that is unfortunately believed by certain foreign politicians and officials, and disseminated within the international community. The ground reality that prevails in Sri Lanka continues to be distorted by this misinformation to the international community. Though the LTTE has been defeated, its global network continues to garner support for terrorist activities through its transnational organizations thus seeking to destabilise peace and derail the reconciliation process that is taking place in Sri Lanka. In the circumstances Sri Lanka needs to retain its anti-terrorism law and the call for its repeal is tantamount to a request to Sri Lanka to renege on its international obligations to effectively respond to domestic and international terrorism. Therefore it is unjustified to demand the repeal of the Prevention of the Terrorism Act (PTA). It is to be noted that the UK and the USA have more stringent legislative responses to terrorism.

28. The GoSL continues to review the cases of suspects held under the Prevention of Terrorism Act in order to prosecute, submit to rehabilitation or release persons held in detention, upon consideration of the evidence.

29. While the High Commissioner asserts that there has yet to be any prosecutions or trials for the war crime of child recruitment, including against former LTTE cadres and former paramilitary leaders now serving in Government, it may be noted that Sri Lanka was delisted from Annex II of the UN Security Council resolution 1612 on Children in Armed Conflict in 2012 reflecting closure on the issue. It may be further noted that Sri Lanka was one of the first countries to ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000. Consequently, Sri Lanka made recruitment of children for use in armed conflict a punishable offence under the Penal Code with Amendment Act. No. 16/2006 of February 2006. All 594 LTTE child combatants who were treated as victims were reunited with their families within a period of one year subsequent to rehabilitation.

B. Attacks on religious minorities, human rights defenders and freedom of opinion and expression

30. It is erroneous to note that there has been a 'significant surge in attacks against religious minorities and incitement of violence by Sinhala Buddhist nationalist groups.' There have been sporadic incidents focusing on places of worship of all four religions. These include 105 attacks on Hindu religious places, of which 95 cases were robberies committed by the locals. With regard to the reported attacks, 16 relate to Buddhist, 41 to Christian/Catholic and 20 to Muslim places of worship during the period from June 2009 to December 2013. Out of the 182 attacks, judicial inquiries are in progress regarding 112, and

22 cases have been concluded. It may be noted that out of the 182 incidents only 147 cases were reported to the police. In all such instances police has taken steps to report facts to Magistrates and action has been taken to produce suspects before Magistrates where credible information has been available.

31. All people living in Sri Lanka enjoy freedom of religion, which is a constitutionally guaranteed right. The Government of Sri Lanka remains committed to ensuring that this right is protected. This is evidenced by the action taken to address reported incidents of disturbances in the recent past. Action has been taken on those who have contravened the law of the land, once sufficient evidence has been gathered for prosecution.

32. More broadly, In keeping with Sri Lanka's societal, cultural and historical norms, regular dialogue continues to take place at various levels to ensure interfaith harmony and understanding amongst its diverse populace.

33. Whenever credible information relating to incidents has been made available the GoSL has taken appropriate action.

34. The general practice of the OHCHR has been to make claims on the basis that credible information is available. However, these claims have not been substantiated. For instance, in the High Commissioner's Oral Update to the Council at the 24th Session she referred to 50 new incidents of arbitrary arrests (reported between 2009 and 2013). Whilst the GoSL in its response requested the High Commissioner to share that information, to date no such details have been provided by her Office which would enable the Government to respond.

35. The basic premise of engagement with a State by the OHCHR should be to provide that country with an opportunity to respond to allegations before statistics are placed before the Council. This is practiced in the breach by the OHCHR to seek to legitimize pre-judged and misplaced agendas thereby misleading the international community. We reject attempts to portray Sri Lanka as intolerant of religious minorities. Whilst sporadic incidents have occurred, as is the case with any multi-cultural, multi-ethnic, multi-religious society, they do not characterize the peaceful existence of the different religious communities of Sri Lanka.

36. With regard to the allegation of police blocking buses carrying members of families of the disappeared as they were travelling to Colombo to participate in a human rights event on 13 November 2013, it may be noted that having perused all records, the GoSL wishes to state that no such incident has been reported to the Police. The GoSL therefore requests that this section be duly corrected.

37. Any attacks against journalists and media outlets that were reported to the Police have been duly investigated and facts have been reported to the relevant Magistrate's Court.

38. Successful prosecution of individual perpetrators requires proof beyond reasonable doubt of all elements of the offence inclusive of the identity of the offender and in a common law system of prosecution that prevails in Sri Lanka unless such evidence satisfies the degree of proof rebutting the presumption of innocence, a prosecution cannot be launched. The GoSL has reiterated that it has not, nor will hesitate to prosecute perpetrators whenever credible evidence is available and that domestic mechanisms inclusive of its criminal laws are adequately equipped to achieve this end.

39. It may also be noted that there is opportunity for media personnel to lodge a complaint immediately through an online complaints system launched by the Sri Lanka Press Council.

40. The GoSL rejects the assertion that there is 'a continuing trend of attacks on freedom of expression, peaceful assembly and association, particularly against human

rights defenders, journalists and families of victims'. The Government of Sri Lanka is fully committed to the protection of human rights defenders. While GoSL has repeatedly requested for specific information with regard to these allegations made regarding the period of the visit of the High Commissioner for Human Rights to Sri Lanka in August 2013, we note that almost 6 months later, a Joint Urgent Appeal from the OHCHR in this regard containing unsubstantiated, uncorroborated allegations of intimidation has been received by the Sri Lanka Permanent Mission in Geneva only on 10th February 2014, less than 24 hours before the deadline set by the OHCHR for GOSL to submit comments on the High Commissioner's draft report. While this communication is receiving the high attention of the GoSL, which would be responding to it in a timely manner, the GoSL takes note of the timing of the communication transmitted just three weeks ahead of the upcoming March Session of the Council where Sri Lanka is due to be considered.

41. The wide range of interactions that the High Commissioner for Human Rights and other foreign dignitaries have had with civil society during their visits to Sri Lanka in 2013 and 2014, as well as the active engagement of civil society from Sri Lanka in successive sessions of the Council are testimony to the vibrant nature of Sri Lanka's civil society and the freedoms they enjoy.

42. There have also been repeated allegations on curtailment of media freedom and freedom of expression in the country. Whilst it is true that there remain certain unresolved cases of violence against media personnel, there is no restriction placed on what may be reported by the press. The law of evidence plays the most crucial role, and due process is required for prosecution. This should not be interpreted as unwillingness on the part of the Government to bring perpetrators to justice.

43. Further, in recent years, the spread of social media networks and online news outlets has contributed to the diversity and the increased speed of propagation of information throughout the country at large. The wide spectrum of views on display in Sri Lanka is amply demonstrated by its print and electronic media, much of which is fiercely critical of the Government. Despite some of the views expressed being on occasion vituperative and targeted at individuals, it is nevertheless recognized that this is the price to be met for upholding the democratic norms of a free and vibrant media. It should also be noted that during the period of the present Government, no press censorship has been imposed. Further the law relating to criminal defamation has been repealed by Parliament.

44. Sri Lanka remains committed to taking necessary steps to ensure the safety of media personnel and institutions. Although no special laws have been formulated with regard to media personnel or institutions, any person who seeks to vindicate their rights has the option of filing a Fundamental Rights application in the Supreme Court, or a Writ Application in the Court of Appeal, or making a complaint before the Human Rights Commission of Sri Lanka on their own behalf or in the public interest. The full gamut of constitutional guarantees, including effective remedies, is available to individuals or groups who wish to canvass for the rights of media personnel.

45. Further, in order to ensure media freedom, the Government of Sri Lanka is seeking to strengthen grievance mechanisms which include complaints to Police, processing Fundamental Rights applications filed in the Supreme Court and complaints to the Press Council. The Government is also pursuing investigations into current cases of alleged attacks on media personnel and institutions.

C. Extrajudicial, summary and arbitrary killings

46. For reasons more fully stated below, the incidents referred to under this heading cannot be categorized as falling under alleged extrajudicial, summary and arbitrary killings.

47. The facts as represented in the High Commissioner's report on the Weliweriya incident are erroneous and misleading. The following maybe highlighted in this regard:

- It appears from the comments contained that the Police and Army disrupted a peaceful protest which is not the case. The public protest campaign in the Weliveriya area alleging the contamination of water by a private factory located there turned violent and police were compelled to seek the assistance of the Army to maintain law and order. A crowd of around 4,000 protestors that had surrounded the factory had attacked police officials and blocked junctions connecting the main Colombo-Kandy road thereby obstructing traffic. Some rioters attempted to grab the weapons of the soldiers and a nearby petrol station was attacked using petrol bombs.

- The number of fatalities is factually incorrect. There were 3 civilian deaths due to the clash and several civilians also sustained injuries. In addition 1 policeman and 8 army officials also sustained injuries.

- Consequent to the Weliweriya incident a 5 member Court of Inquiry (CoI) was appointed by the Army Commander on 02/08/2013 and the said CoI submitted its report to the Commander on 21/08/2013. The report has been referred to the Director Legal/Chief Prosecutor of the Army for further action. Once the findings and recommendations of the CoI have been examined, the procedure leading to Court Martial, known as the recording of Summary of Evidence, will be ordered against persons where a prima facie case has been made out.

- In order to facilitate this process the Brigade Commander who was in charge of the Weliweriya area and 3 Sector Commanders have been relieved from their duties.

- From the evidence led before the CoI it has been revealed that the Army was deployed in the Weliweriya area at the request of the Police and this was justifiable considering the security situation in the area. Further, in terms of the Code of Criminal Procedure Act the Army is empowered to take appropriate action in a riot situation.

- The Police investigations on the 3 deaths that occurred during the incident are being conducted by the Colombo Crime Division of the Police. The Magistrate Court of Gampaha has concluded the magisterial inquiry into these deaths and the dossier of the inquiry has been forwarded to the Attorney General for consideration.

48. With regard to Welikada prison incident, the sequence of events that occurred is detailed below:

- Upon a formal request by the Commissioner General of Prisons, a team of unarmed police officers from the Special Task Force undertook a search operation in the Welikada prison on 09 November 2012 to look into reported possession of narcotics and offensive weapons by the inmates. The Police team was able to discover a substantial quantity of narcotics during the initial search. When the search was extended to the wards of the hardcore prisoners, they attacked the Police, who had to retreat using tear gas. Thereupon, the inmates broke open the prison armory and armed themselves with automatic assault rifles and started shooting indiscriminately. The prison which was built during the British colonial period is located adjacent to a busy highway and consequently, several motorists and passersby were hit by bullets. During this riot some of the hardcore convicts escaped from custody.

- The police being unable to contain and control this situation called for assistance from the Sri Lanka Army. When the Army arrived on the scene they observed that the shooting was still continuing and that several police officers, including the STF Commandant had sustained serious gunshot injuries. Assessing the situation and realizing the need to protect and rescue lives of the unarmed police officers, prison

officials, other inmates and civilians passing by, the Army was compelled to use force in order to bring the situation under control. In the circumstances, the GoSL rejects the categorization of this incident as an extrajudicial, summary or arbitrary killing.

49. With respect to the Vavuniya prison incident, investigations conducted up to now do not disclose sufficient material to attach criminal responsibility to any particular person. Consequent to an order made by the High Court judge of Vavuniya in case no. HCB 2275/2011, to transfer a prisoner to a detention camp in the South, the other prison inmates began a protest campaign and took hostage 3 prison officers and continued this protest for more than a day. Unable to control this siege the prison authorities summoned the assistance of the STF of the Police in order to rescue the prison officials held as hostages. In the course of this operation 2 prisoners, 3 officers of the prison and 7 STF personnel were injured as a result of the attack launched by the prisoners. The 2 prisoners who sustained injuries during the rescue operations later succumbed to their injuries. As the facts demonstrate this incident is in no way characteristic of extrajudicial, summary or arbitrary killing.

D. Mass Graves

50. The remains found in the graves in Matale and Mannar have been taken into judicial custody and are being sent for examination and carbon dating under judicial orders. Thus the integrity of evidence available for any potential prosecution has been preserved.

51. With regard to the recovery of skeletal remains in Matale, police investigations have revealed that there had been a cholera epidemic in 1940s and those who died had been buried in a remote corner of the Matale hospital premises itself. All these aspects are being investigated by the police.

52. The Magistrate of Matale was transferred consequent to complaints made by the entirety of the Bar in Matale on irregular practices committed by the said Magistrate in association with local police. This disciplinary measure of transfer has been taken by the Judicial Service Commission in accordance with the provisions of the Constitution and the transfer has nothing whatsoever to do with the handling of the mass graves' case.

53. With regard to the recovery of skeletal remains in Mannar, it has been revealed that the area had been occupied by the LTTE for 30 years, except during the period 1988/89 when it was occupied by the Indian Peace Keeping Force (IPKF), till the area was liberated in 2008, it was not under the control of the GoSL. The matter is presently being investigated by the Police under the supervision of the Magistrate of Mannar.

IV. Implementation of the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC)

54. Please find given below GoSL observations with regard to Paragraphs 29 to 32 of Section IV of the Report. GoSL requests that these paragraphs be corrected as per the observations provided below:

i. The statement that GoSL has been selective in implementing only some of the recommendations of the LLRC is erroneous. It is also factually incorrect to say that only 30 of the 145 recommendations 'are only partially reflected in the NPoA', and that 'a remaining 140 recommendations have been left unaddressed in the NPoA altogether';

ii It may be noted that Chapter 9 of the LLRC Report titled 'Summary of the Principal Observations and Recommendations' contains 285 paragraphs which is the sum total of observations and recommendations. Several of such recommendations are widely

similar, have common objectives and outcomes, and are repetitive. The GOSL has identified 144 as recommendations which have been clustered in the LLRC National Plan of Action (NPoA) under five themes:

(i) International Humanitarian Law Issues (07 recommendations);

(ii) Human Rights (54 recommendations);

(iii) Land Return & Resettlement (24 recommendations);

(iv) Restitution/Compensatory Relief (09 recommendations);

(v) Reconciliation (50 recommendations).

iii. These recommendations have been comprehensively incorporated into the LLRC NPoA and are now under implementation. Further, all agencies assigned with the implementation of the NPoA are instructed to consider the recommendations in their entirety and implement them in the spirit in which they had been made in the LLRC report;

iv. The recommendations itemized under Footnote 14 as being only partially reflected in the NPoA is erroneous. Recommendations 9.81, 9.98, 9.103, 9.117 and 9.134 referred to are adequately reflected in the NPoA and are under implementation. Further, with regard to recommendation 9.98, Article 12 of the 1978 Constitution stipulates the Right to Equality and Article 12(4) states that no law can be made to prevent the advancement of women, children or disabled persons. Protection of The Rights of Persons with Disabilities Act (No. 28 of 1996) amended by Act No. 33 of 2003 stipulates the legal provisions on protection to disabled persons. It may be noted that Sri Lanka is a signatory to the Convention on the Rights of Persons with Disabilities as of 30 March 2007. With regard to implementation of recommendation 9.103, GoSL continues to work closely with UN agencies, INGOs, NGOs and civil society on infrastructure development and reconstruction, including re/construction of housing. With regard to Recommendation 9.117 GoSL has removed all restrictions at all places of religious worship in Sri Lanka. Further, the implementation of the Recommendations 9.134 and 9.140 are completed, while Recommendation 9.128 is under implementation. Recommendation 9.236 has been referred to the Parliamentary Select Committee for further action. The GoSL requests that the above footnote and related reference (Paragraph 30) be corrected to reflect the above;

v. Paragraph 31 – Of the items referred to at Footnote 15, 9.56, 9.166, 9.121 and 9.170 are observations. However, the gist of all observations made in Chapter 9 of the LLRC Report is incorporated into the 144 recommendations contained in the NPoA. Hence it is erroneous to affirm that 'the remaining 140 out of the LLRC's 285 recommendations have been left unaddressed in the NPoA altogether'. GoSL requests that this misperception be corrected.

vi. Paragraph 31 - It is erroneous to indicate that the NPoA does not include the safeguards recommended by the LLRC to ensure the security and safety of any person taken into custody. For example, Recommendation 9.47 itemized at Footnote 16 which refers to the responsibility of the State to ensure the security and safety of any person taken into custody through surrender or arrest is fully covered by Recommendations 9.53, 9.67, 9.54, 9.55, 9.57, and Interim Recommendation IR (1b) in the NPoA Report (Serial Nos. 12, 13, 14, 15 and 22). Further, in regard to recommendation 9.64 which refers to the full implementation of all Interim Recommendations (IR) of LLRC pertaining to detainees, it may be noted that the latter recommendations are reflected under IR (1a) and IR (1b) in the NPoA (Serial Nos. 17 and 22). It may be further noted that IR (1a) and IR(1b) (i) and (ii) are completed and IR (1b) (iii) is in progress. Similarly, 9.62 itemized at Footnote 16 which pertains to detainees is adequately covered by LLRC IR 1(a) which is included in the NPoA Report at Serial No. 17. While 9.66 in Footnote 16 contains both an observation and a recommendation, the implementation of the recommendation with regard to cooperation

and constructive engagement with the ICRC has been in progress even before the NPoA and still continues, e.g., cooperation on detention issues and prisons visits etc. GoSL requests that this paragraph be corrected;

vii. Paragraph 32 - With regard to recommendation 9.46 on taking immediate steps to ensure that allegations of abductions, enforced disappearances and arbitrary detention, are investigated, the NPoA comprehensively provides the progress of the implementation of this recommendation.

55. The implementation of the NPoA is a dynamic process which evolves over time to culminate in the accomplishment of the recommendations. This process is envisaged to incorporate additional measures and modifications of the activities as and when required to fulfill the respective recommendations.

56. Significant and tangible progress has been made by the GoSL in the reconciliation process, including implementing the recommendations of the LLRC through the NPOA, with particular reference to addressing issues of accountability, including, inter alia, issues related to disappearances, detention, casualty figures, rehabilitation, resolution of land issues, demilitarization, restoration of civil administration, reduction of military presence in the Northern province, demining, resettlement of IDPs, infrastructure and socio-economic development of the Northern and Eastern provinces, restitution and compensatory relief, implementation of Trilingual policy, promotion of ethnic and cultural harmony through school curricula, livelihood development, integration of youth in reconciliation, recruitment of Tamil speaking officers to the public service, institutional strengthening and democratization including election of the Northern Provincial Council, establishment of a separate Ministry for Law and Order, strengthening of the Official Languages Commission, fully functional Courts in the Northern Province with the exclusive use of the Tamil language, etc., which have been disregarded by the High Commissioner in her Report.

57. The High Commissioner's call to establish an international inquiry mechanism to further investigate the alleged violations of IHRL and IHL and monitor any domestic accountability process gives scant or no regard to the domestic processes ongoing in Sri Lanka within the framework of the LLRC NPOA, and is politicized in premise. The GoSL therefore, categorically rejects this call.

58. At Sri Lanka's UPR in November 2012, the GoSL stated that '...some of the recommendations fall under the ambit and scope of the NHRAP' (National Plan of Action for the Protection and Promotion of Human Rights). GoSL would appreciate if this statement is accurately reflected in Paragraph 31.

59. Investigations of this nature are complex and time consuming. The GoSL has consistently reaffirmed its commitment to investigate any allegation and whenever credible evidence emerges to make out a prima facie case, the GoSL will engage in prosecuting those found responsible for such crimes.

60. With regard to specific references made in Paragraph 35 of the High Commissioner's report please see the response of the GoSL under 'Former combatants and detainees'.

V. Progress on accountability issues

61. The fact that multiple mechanisms of accountability have been set in motion by the GoSL cannot be discounted by mere assertions of lack of independence and credibility. The multiple mechanisms of accountability demonstrate the comprehensive initiatives taken by the GoSL and they are in no way piecemeal.

62. By virtue of powers vested in the Executive under the Commission of Inquiry Act, a 3 member Commission of Inquiry has been appointed to investigate and report on matters relating to involuntary disappearances that were alleged to have occurred in the Northern and Eastern Provinces between 10 June 1990 and 19 May 2009. The Commission is vested with a wide mandate (Gazette Extraordinary No. 1823/42 dated 15 August 2013).

63. The said Commission is empowered to inquire and report on several matters relating to the alleged incidents. They include evidence on identity of any resident of these 2 provinces who had been abducted or disappeared from their residences, their present whereabouts and identity of persons responsible for such abductions and disappearances. The Commission is further required to report on the possible legal measures that can be initiated against the persons who are found responsible for such abductions and disappearances and measures that could be taken to prevent recurrence of such acts in future. The mandate of the Commission further includes inquiry into the obligation of the government to grant reasonable relief to the immediate family members of persons who have been so abducted or disappeared.

64. The Commission's mandate is to focus on the alleged abductions or disappearances that occurred during the period 1990 to 2009 of persons resident in the Northern and Eastern provinces which was the former theatre of conflict. It was specifically confined to the North and East as the majority of allegations of disappearances emanated from within the said Provinces.

65. This wide ambit and the fact that the Commission has so far received over 13,000 complaints establish that the Commission is an effective accountability mechanism which commands the credibility to hold accountable anyone who has been responsible for violations, if any, of international human rights law and international humanitarian law and thus, Sri Lanka possesses today an efficacious institution which cannot be discounted by any standards.

66. In addition to the above, the GoSL has also taken the following measures to address accountability issues:

- Established Military Courts of Inquiry
- Conducted the Enumeration of Vital Events (2011)
- Set up a database on detainees with access to next of kin
- Streamlined reporting procedure to the UN Working Group on Enforced and Involuntary Disappearances (UNWGEID)
- Regular discussions take place between the GoSL and the ICRC on exploring possible areas of cooperation on alleged disappearances

67. It is well recognized that in matters pertaining to breaches of military discipline, especially with regard to violations of IHL, military courts have the jurisdiction, and the legality of these military courts have been recognized by many international instruments on IHL including Geneva Conventions and the Hague Conventions. Therefore, by virtue of the powers vested in the Commander of the Army by the Army Act and under international law he has appointed a Court of Inquiry to inquire into and investigate the alleged violations of IHL.

68. The country-wide Census on Deaths/Injuries to Persons or Property Damages due to conflicts since 1982 will address, inter alia, the issue of enumerating casualty figures, considering that victims were not confined only to the end stage but were affected during the entire duration. This Census which was carried out by the Ministry of Public Administration and the Department of Census and Statistics was concluded in December 2013. With regard to the census in the former theatre of conflict it was carried out by

Tamil-speaking public officials serving in the North and the East. The Census will help establish casualty figures with a level of credibility which is not to be found in the unsubstantiated, arbitrary figure of 40,000 referred to in the UNSG's POE Report on Sri Lanka which is discredited and rejected by the Government of Sri Lanka.

69. Since many of these persons who have been reported as missing have taken refuge abroad, mainly in countries in the Western hemisphere, including the UK, USA and Canada, the GoSL requested for information of such persons who had sought asylum. This request has been denied by the aforementioned countries citing laws, regulations and policies of those governments and stating that they could not confirm, deny or otherwise comment on whether particular individuals have applied for or been granted asylum. This would also have a bearing on the work of the Commission on Disappearances.

70. References made by the High Commissioner to alleged killings of journalists and attacks on media institutions has been responded to in the section on 'Attacks on religious minorities, human rights defenders and freedom of opinion and expression'.

71. The GoSL does not have the competence to comment on the content of Paragraph 44 as it relates to an initiative by the NHRCSL which is an independent entity.

72. The LLRC is a homegrown mechanism established with the objective of truth seeking and reconciliation. The GoSL is best placed to determine its own processes with regard to truth seeking and reconciliation.

73. With regard to the Trinco Five case, the Non Summary inquiry which is in progress has concluded the evidence of 14 witnesses and affidavits of 7 official witnesses have been tendered before court. 14 other witnesses have been summoned for the next date of inquiry which is 06 March 2014. 7 witnesses are said to be living overseas and steps have been taken to trace their whereabouts. Attempts to serve summons on witnesses via e mail failed. The progress up to now is due to relentless efforts of the GoSL and the investigators. The Attorney General has appointed a senior prosecutor to monitor the investigations and directed the special investigating team to pursue any clue to unearth the identity of the offenders. Even up to date the identity of the offenders has not been established specifically. However, going on the available evidence it has been established that the accused against whom proceedings have now been instituted were around the place when the offence had been committed. Prosecution has been instituted on the basis that those accused being law enforcement officers, should offer a reasonable explanation if an offence was committed when they were around the place and if no such explanation is offered a court of law may reasonably conclude that they were involved in the commission of the crime, especially since they were under a legal duty to prevent the commission any crime. Therefore, it is evident that a judicial process is ongoing and the GoSL remains committed to bring this matter to a conclusion.

74. With regards to the Action Contre la Faim (ACF) case, a team of senior prosecutors comprising 6 Senior State Counsels and a State Counsel reviewed material gathered during the investigation, inquest and Presidential Commission of Inquiry, pertaining to the incident. This team works under the direct supervision of two Additional Solicitors General. Several official witnesses such as the Judicial Medical Officer and the Government Analyst (ballistic expert) were interviewed.

75. On the instructions of the AG, further investigations are being conducted by the Criminal Investigation Department (CID) as recommended by this team of prosecutors, who are especially dedicated to the ACF case. The CID has been instructed to investigate details of calls made using the telephones used by the deceased workers and to interview, inter alia:

- all members of armed units that regained control of this area after the attack by the LTTE which was repulsed following two to three days of fighting,
- family members of the deceased aid workers on contacts they had during the relevant period,
- ACF members who were attached to the Muttur Office as well as the Trincomalee Office from where the deceased workers were sent to Muttur.

76. The progress of further investigation conducted by the CID is reviewed periodically by the team of prosecutors. It must be specifically stated, that in this case too, it has not been possible to establish the identity of the accused. These offences have been committed after the LTTE invaded the village and all inhabitants abandoned the area on receipt of information of the advancing LTTE cadres. The law enforcement officers retreated as they felt that they could not engage the LTTE who by far were numerically larger. A Catholic Priest who testified had stated that he was the last to leave the village and found the ACF workers still remaining. Further, he had requested them to leave but they had refused. The available evidence is to the effect that the forces found the dead bodies when they arrived at the village after several days. Investigations into this incident under prevailing conditions of the conflict in that region became extremely difficult. The GoSL unreservedly condemns the murder of the ACF workers. The Attorney General has stated that a prosecution would be launched if any evidence is made available to establish the identification of the perpetrators of the offence. A request has been made by the GoSL through relevant diplomatic channels for assistance to locate witnesses abroad even on the basis of anonymity to facilitate investigations.

77. The reference to the Channel 4 video footage without qualification in the Report leads to confusion between the original video footage of 1mn 17s in duration (November 2009) referred to by the former SR on Extrajudicial, Summary, or Arbitrary Executions Mr. Philip Alston; the second 'extended video footage' of 5mn 25s in length, (December 2010) referred to by current SR on Extrajudicial, Summary, or Arbitrary Executions Mr Christof Heyns; and the subsequent Channel 4 documentary video 'Sri Lanka: Killing fields' which continues to be periodically recycled and screened, with the tacit support of elements of the diaspora linked to the former LTTE, to coincide with the March sessions of the Human Rights Council when the resolution on Sri Lanka comes under consideration.

78. It should be noted that reference to the footage of the latter Channel 4 documentary has not been the subject of any investigation. Therefore, reference to pronouncement on authenticity or otherwise of the latter documentary of Channel 4 without distinction between the different footage is erroneous and misleading. Furthermore, this footage has not been the subject of investigation of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The GoSL requests that this misperception be duly corrected in the Report.

79. It may be further noted that while the LLRC wrote to the Independent Television Network (ITN), United Kingdom, requesting a copy of the original broadcast footage of Channel 4 and whatever other information the Network could share with the Commission including the dates, location, dates, location etc., related to the alleged incidents, ITN did not provide a copy of the original broadcast video. In the absence of a copy of the original broadcast footage, the LLRC used for its investigative purposes ''the video as available in the public internet domain''. The Commission in its observations / recommendations on the video, inter alia, expressed its ''regrets'' at ''the fact that the Broadcaster did not respond positively to the request made by the Commission to provide more comprehensive information'', and noted that "greater cooperation by the organization that provided to the television stations these video images and by the Producer/Broadcaster that aired this footage is essential to establish facts of this case.'' (LLRC Report November 2011).

80. Notwithstanding the lack of authenticity of the Channel 4 video acting on the recommendations of the LLRC, a Military Court of Inquiry has been established to inquire into the unsubstantiated allegations contained therein which is in progress. At present, the Court is interviewing various Field Commanders to identify the relevant formations and potential witnesses. This is a tedious task and once the potential witnesses are identified, they will be formally called as witnesses.

81. With regard to the assertions on Balachandran, Thurairajasingham and Isaipiriya, it is categorically stated that the authenticity of the footages/photographs referred to remain unsubstantiated and unverified. In the circumstances, the GoSL objects to the inclusion of a reference to this unverified material in the High Commissioner's Report.

82. Due to the lack of credible evidence there are no further inquiries being conducted pertaining to the "White Flag" incident.

83. The wife of Prageeth Ekneligoda filed a Habeas Corpus application in relation to his alleged disappearance. This case is pending in the Magistrate Court of Homagama. A witness that was called to give evidence by the Counsel representing Mrs. Ekneligoda who claimed to be a friend of Prageeth Ekneligoda stated that he was to meet Prageeth that evening, who had telephoned him stating that he will be getting late. Subsequently, Prageeth spoke with this witness over the telephone and informed that he was with some friends and was on his way to meet the witness. While this conversation was taking place the witness claims that the call got disconnected and subsequent attempts to contact Prageeth over the phone immediately thereafter were unsuccessful. This witness was the last person who had contact with Prageeth Ekneligoda. Another witness called to give evidence by the Counsel for Mrs. Ekneligoda has stated of a sighting of Prageeth in France.

84. Former Attorney General giving evidence at the said inquiry stated that what was told by him before the Committee Against Torture was that there was information that Prageeth Ekneligoda is living in a Western country and that the GoSL was investigating that aspect. When the former Attorney General was questioned in court if he was personally aware of the whereabouts of Prageeth Ekneligoda, he replied in the negative, and he further stated that he made this statement on instructions received that the information was being investigated. The Magisterial inquiry is in progress.

VI& VII. Conclusions & Recommendations

85. In the light of the aforementioned positions contained in this response, the GoSL repudiates the conclusions and recommendations that have been erroneously arrived at in the High Commissioner's Report as they are based on incorrect and/or unsubstantiated and extraneous sources/material.

86. While the GoSL has categorically rejected resolution 22/1, it has nevertheless continued to make significant progress in its own reconciliation process, and Sri Lanka has continued to regularly update the Council on such progress. In this context, GoSL rejects, without prejudice to its position of non-recognition of resolution 22/1, the High Commissioner's claim that most of the recommendations made in her previous report to the Human Rights Council remain unimplemented.

87. With regard to the statement attributed to the Attorney General in paragraph 68, the Attorney General has categorically stated that this is a misrepresentation of his position by a false and misleading link being drawn between the lack of progress in cases such as the Trincomalee and ACF killings, and the absence of a Victim and Witness protection mechanism. On the contrary, he had informed the High Commissioner during the discussion, that the absence of such a law never posed an impediment to the judicial process, pointing out that whenever a complaint of intimidation of witnesses was brought to

the attention of authorities, steps were taken to ensure the securing of that testimony without any let or hindrance.

88. The trajectory that has emerged with regard to the recommendation of the High Commissioner to the HRC for the establishment of an international inquiry mechanism reflects the preconceived, politicized and prejudicial agenda which she has relentlessly pursued with regard to Sri Lanka. It may be recalled that just a week following the defeat of terrorism in Sri Lanka, on 26th May 2009, at the 11th Special Session of the UNHRC on Sri Lanka, the High Commissioner in the first instance, called for "an independent and credible international investigation" which was subsequently reiterated by her at the 11th regular session on 3rd June 2009, 14th session on 31st May 2010, and the 17th Session on 30th May 2011. In the Report of the OHCHR (A/HRC/22/38) dated 11th February 2013, she "reaffirms her long-standing call for an independent and credible international investigation..." The reference in the current report that "the High Commissioner remains convinced" for an "independent, international inquiry" demonstrates her persistent efforts against Sri Lanka. It is pertinent to question the factual basis for the High Commissioner's initial formal call to the HRC for an independent, international investigation and its continuation, in order that the international community not be misled.

89. The Government of Sri Lanka reiterates its categorical rejection of the Conclusions and Recommendations contained in the High Commissioner's Report, reflecting bias and is tantamount to an unwarranted interference in the internal affairs of a sovereign State.